

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1262

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-1262

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

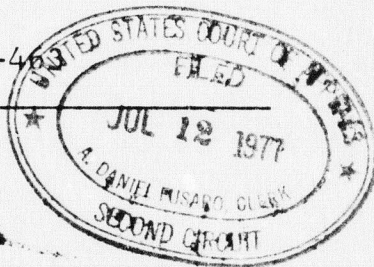
- against -

THEODORE G. DALEY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX
Vol. II pp. A-233 to A-466



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(In open court; jury present.)

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THE COURT: Ladies and gentlemen, we have come to the time when counsel will now sum up for you. I want to make a couple of statements before they do. One is that with regard to a matter that arose during the course of the trial, you may recall there was a reference to a fire, a very brief reference it was, and we put it aside, to a fire at the Newburgh headquarters of Local 445. Both counsel have asked me to tell you that it is not the Government's contention that Mr. Daley or the union or anybody connected with it had anything to do with that fire. So you can put it aside.

Now, I want to remind you, and perhaps it is appropriate, this has been a fairly long trial, of the advice I gave you or the instructions at the outset of the case that whatever counsel will be saying in their summations will not constitute evidence.

You have now heard all the testimony in this case and you have seen all the exhibits that will be admitted. So remember what Mr. Wohl and Mr. Newman have to say is their analysis of what has been proven or not been proven during the course of the trial.

With that I will ask Mr. Wohl to make his summation.

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2 MR. WOHL: Your Honor, counsel, Mr. Foreman,
3 ladies and gentlemen of the jury:

4 It has been a somewhat long trial. You have
5 heard many witnesses by now and you have received a great
6 deal of testimony, both direct examination and cross-
7 examination.

8 The Government submits to you that this evi-
9 dence has established the charges that are set forth in
10 the indictment before you, and those charges are essentially
11 that Mr. Daley took, improperly took, materials and services
12 from employers who employed members of the union that he
13 was the head of, and also that he obtained those goods
14 and services through extortion, that is, by relying on
15 the fear that those people would naturally have of him and
16 his associates in order to get them to give those materials,
17 the labor and the services that went with them.

18 Now, ladies and gentlemen, I think it is appar-
19 ent to you at this point that this is not a case in which
20 you are going to be able to take all of the testimony
21 and put it all together in a manner that allows you to
22 reconcile it all, that is, to decide that everybody is
23 innocently giving you truthful testimony to the best of
24 their recollection and that it in some way fits together
25 in a cohesive whole, you might say. You are not, we say,

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2 going to be able to decide the case that way.

3 The evidence is clear, we would submit to you,
4 that somebody who went up on that witness stand was not
5 being totally candid with you, somebody was attempting
6 consciously to deceive you when they testified before you
7 and did not take seriously the oath that they had taken
8 to tell the truth, the whole truth and nothing but the
9 truth.

10 And consequently, as you go about deciding this
11 case, one of the important things that you are going to have
12 to consider is the credibility of witnesses.

13 The Government submits to you that although
14 there may have been errors from time to time, some of the
15 Government witnesses may have been mistaken on certain
16 dates and things of that sort, that fundamentally the pic-
17 ture presented to you by the Government witnesses is
18 fundamentally an accurate picture of what happened here,
19 that Mr. Daley got the driveway, he got the stone, he got
20 the material that went with it and that he didn't pay for
21 it.

22 And it is true, the Government admits right at
23 the outset, that some of these witnesses don't feel par-
24 ticularly kindly toward Mr. Daley. Naturally we would
25 expect you, however, as people who have some common sense

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2 and some experience in the world, to recognize that the people
3 who are profiting from Mr. Daley's position, the people
4 who you might say are on the gravy train, are not going
5 to be anxious to come running into Federal Court and tell
6 you all about the improper things that Mr. Daley is doing.

7 And we ask you to consider whether isn't it
8 just entirely natural that people who are going to come in
9 and tell you about criminal activity might be people who
10 in one way or another Mr. Daley has offended or insulted
11 or criticized or fired from their position in one way
12 or another.

13 We ask you to recognize also, however, that a
14 number of defense witnesses have a very significant interest
15 in the case, and that is an interest in the outcome of
16 the case, in considering what happens in the event Mr.
17 Daley is convicted in the case and what their position is
18 going to be.

19 And we would submit that when you balance those
20 motives you have got to recognize that there is a very
21 great interest on the part of some of the defense witnesses,
22 and that may explain to you why, as the Government submits
23 to you, those witnesses were not candid with you, they didn't
24 just make mistakes, they consciously were trying to deceive
25 you, we would submit.

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2 But first it might be helpful to turn to what
3 facts seem entirely clear in the case, where it would
4 appear there is not very much dispute, if any dispute,
5 and I can't know without hearing what Mr. Newman has to
6 say whether there is any dispute, but from the Government's
7 point of view I would submit to you that it seems very
8 clear, for example, that in 1971, Mr. Daley had a house and
9 he either didn't have a driveway or the driveway wasn't
10 everything he would like it to be, so he wanted to get
11 himself a better driveway.

12 And the evidence is also very clear that he
13 did get himself a better driveway.

14 The evidence is clear in this case, ladies and
15 gentlemen, it wasn't Mr. Alecca, it wasn't Mr. Clausi,
16 it wasn't any of these drivers who got the driveway,
17 it was Mr. Daley, the defendant in the case, who got the
18 driveway.

19 And, ladies and gentlemen, it is clear that the
20 driveway was made out of some material, whether you call
21 it stone that was selling down in Kingston for \$2.50 a
22 ton or whether you call it screenings that was selling in
23 Kingston for \$1.50 a ton, it was made out of material that
24 had some value, that was salable material, as Mr. Greene
25 told you from Hudson Cement Company, that they were selling

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2 from time to time.

3 Now, down in Kingston it wasn't selling at
4 the high price it was selling for up in Windham of \$9 a
5 ton, but it was selling for something. And so it was
6 material of some value.

7 And the evidence we would submit is fairly
8 clear that there were a number of truckloads that were taken
9 of that material up to Mr. Daley's place.

10 I am not going to get down with an auditor's
11 pencil with you and try to ferret out whether it was exactly
12 40 ton -- excuse me -- 40 loads, 35 loads, 30 loads. I
13 think the evidence is pretty clear it was somewhere in
14 the vicinity between 30 and 40 loads. Mr. Turco of the
15 cement company testified, you will recall, that he saw
16 something like between 25 and 30 weight tickets, and there
17 was substantial testimony there were a number of drivers who
18 went in and out and they didn't get any weight tickets.

19 So you can say as a bottom line number there
20 were around 30 to 40 loads in there somewhere.

21 Also the evidence is pretty clear that there
22 were quite a few tons on each load, say 15 tons is what
23 most of the witnesses seem to be testifying about, Mr.
24 Spada said it was ten tons, but these were big loads on
25 those 10-wheeler dump trucks.

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2 The evidence is clear that it went up there
3 on three occasions. First of all, the night of September
4 3, 1971. You will recall a number of witnesses testi-
5 fied they went up in the evening at the direction of Mr.
6 Clausi and got back very late in the morning. It seemed
7 that that was somewhere around an eight-hour trip.

8 Then you will recall the evidence was that
9 they got up the next morning and they didn't get to the
10 Hudson Cement Company until about one o'clock because the
11 owners were there, and they went up the next day in the
12 afternoon, and we submit you could reasonably find that was
13 about a five-hour trip. The drivers seemed to feel once
14 they got the roadway learned so they knew what the best
15 route was they seemed to be able to make the trip a little
16 bit faster than they could before, but they always seemed
17 to be saying it was a two-hour trip in these 10-wheel
18 dump trucks.

19 So if you give them an hour combined to do the
20 loading over in Hudson Cement Company and do the dumping
21 up in Windham, you have got basically a five-hour trip
22 on that occasion.

23 Then you will recall after the trip of September
24 4, the evidence was quite clear that there was a lapse of
25 a week in there during which there weren't any trips, and

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2 then the following Friday evening they loaded up the trucks
3 again, a number of trucks were again loaded up at Hudson
4 Cement Company and the material was taken at five o'clock
5 in the morning from Kingston to Windham, New York.

6 And you will recall the testimony was that a
7 substantial amount of fuel was used in doing this and a sub-
8 stantial number of manhours of labor were used.

9 I think some of the testimony was that one of the
10 trucking companies used about 300 gallons of fuel alone.
11 You will recall there was Kozlowski's trucking company
12 involved, there was Spada's trucking company involved,
13 and they said they spotted a couple of other trucking com-
14 panies that they knew were in the area that participated
15 in the hauling operation.

16 You know that these services, the truckers and
17 the -- that is, the truck owners and the drivers served
18 were of some value.

19 You know that I suppose of your own common sense.

20 And in addition, there was evidence that the
21 trucks were ordinarily rented out at something like \$8
22 an hour, and there was testimony that these men when they
23 worked, their ordinary scale of pay was somewhere around
24 \$6 an hour.

25 So breaking it all down, whether you put it

1 gwb-9

2 together by the stone price at Hudson Cement and then you
3 put all the delivery prices together until you ultimately
4 get up to Windham or whether you just take Mr. Lawrence's
5 figure and you say, "Well, the stuff was selling for nine
6 bucks a ton up in Windham", you have got a substantial
7 value of material being shipped up to Mr. Daley in order to
8 make this driveway.

9 Then you will recall the timbers were dis-
10 cussed, and I think that what I said to you in my opening
11 about the evidence being in some degree of conflict regard-
12 ing the conflicts turned out to be accurate, but you will
13 recall that fundamentally it was established that there wer-
14 two deliveries of timbers, and I think Mr. Daley admits this;
15 that one of the deliveries of timbers at least was the type
16 of timber that had a substantial value. We may never
17 have gotten what the exact dollar value of those timbers
18 were, but you will recall that there was substantial
19 testimony that when these timbers are painted white they
20 are used on these roadways in order to divert traffic.

21 You will recall that Mr. Hahn, a defense wit-
22 ness, testified that Mr. Maggiola had said to him these
23 timbers were too valuable to give away and consequently
24 he didn't want to give any of them away.

25 And you have it established beyond any doubt,

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1 ladies and gentlemen, no matter how they got there, at least
2 one load, and maybe two loads, of these white long, good
3 timbers were shipped up to Mr. Daley. There isn't any
4 doubt about that at this point, is there, ladies and
5 gentlemen?
6

7 And you have also got it clear that equipment,
8 bulldozers, a black hoe, were used and that this equipment,
9 as Mr. Dave Alexander testified before you, is normally
10 rented out at a pretty high price, ten, fifteen dollars
11 an hour. That material was also taken up to Mr. Daley's
12 place in order to help in the construction of this
13 driveway. Of that we would submit to you there is also
14 very little, if any, doubt.
15

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2 So, ladies and gentlemen, it is clear to you
3 as you start to look at this case that Mr. Daley certainly
4 received something of substantial value, that if you
5 ladies and gentlemen had a house of that sort and decided
6 that you needed a driveway and you went out to hire some-
7 body to get that driveway put in, it would cost you a sub-
8 stantial amount of money in order to get that driveway
9 put in.

10 There is no doubt about that, and you, ladies
11 and gentlemen, certainly don't get a driveway of this
12 sort in the manner that Mr. Daley did.

13 Now, let's look, ladies and gentlemen, at some
14 of the facts that appear to be in dispute. First of all,
15 it would seem that one of the facts that is in dispute
16 is exactly what it was that Mr. Daley got in the form of
17 what was this material that was hauled up there in all
18 of these dump trucks.

19 The Government would submit to you again
20 that it may not make an enormous amount of interest whether
21 it is so-called screening material that is selling at a
22 lower price or the 3/8 stone that is selling at a higher
23 price, but the evidence is fairly substantial that it was
24 the 3/8 stone, the stone about the size of your pinky
25 or the size of a pencil eraser, and there was a substantial

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1 amount of testimony on that score that that is what these
2 people were hauling up there.

3
4 As you start to look at it in light of your
5 own common sense, we would submit to you that you would come
6 to this with the recognition of the overall fact that it
7 just doesn't make a whole lot of sense to say that people
8 are going to spend hundreds and perhaps even thousands of
9 dollars trucking stuff that is just totally complete fill,
10 that is garbage, all the way from Kingston up to Windham.
11 That just doesn't sound very sensible, so when you start
12 to look at the case you have to recognize that at the
13 beginning.

14 Then let's look at the testimony. Wasn't the
15 testimony very substantial that this was 3/8 stone. Mr.
16 Clausi testified that it was 3/8 stone although he said
17 that it was dirty 3/8 stone.

18 You will recall that the witnesses from the
19 company said there is nothing all that strange about that
20 because they don't ordinarily wash this stone in the par-
21 ticular operation they had.

22 Mr. Kozlowski said it was 3/8 stone. Mr.
23 Bockelmann said that it was small stone, about the size
24 of a pencil eraser.

25 The driver, Joseph Forte, testified that it was

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2 3/8 stone. Alton Steward, another driver, testified that
3 it was fine stone. Mr. Qualtere, one driver said he
4 didn't know what it was, but Clausi had told him that it
5 was waste. Eaton, another driver, Leland Eaton, who just
6 did the loading and then refused to go up, testified that
7 he didn't recall what kind of stone it was.

8 Another witness, Herb Sutton, testified that he
9 didn't know what it was.

10 Then, ladies and gentlemen, we would submit
11 to you there came before you some very substantial evidence
12 that would give you a considerable insight into this case.
13 The defense put on the stand Mr. Spada, and he testified in
14 front of you as he was sitting in that witness chair,
15 repeatedly, over and over again, that this material was
16 waste, there was no doubt about it, he was absolutely certain
17 of the fact that it was waste, and he knew what the
18 different kinds of stone were and he was clear that this
19 material was not Number 1 stone or Number 1A stone.

20 There was no mistake about it according to Mr.
21 Spada.

22 Then you recall he was confronted with his grand
23 jury testimony and the Government submits to you that
24 you may well find that the grand jury testimony was con-
25 siderably more accurate than his testimony that he gave

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2 from that witness stand. He was asked the question,
3 a number of questions leading up to the delivery that you
4 may recall, and you can ask to have it reread if you would
5 like, and ultimately the question was: "And do you
6 recall what kinds of stone was stockpiled there referring
7 to the Hudson Cement Company?"

8 He says, "There is all different grades of stone.
9 I think the type we loaded was either 1 or 1A."

10 You recall that after all the times that he
11 sat right in front of you and said that he was absolutely
12 sure that that material was not 1 or 1A stone.

13 Then, ladies and gentlemen, Mr. Spada said, well,
14 I am sure that it is in there, that I told that to the
15 grand jury, and you recall he was then given an opportunity
16 to read his grand jury minutes, and he couldn't find it in
17 there because it wasn't in there.

18 Then you recall that he said that he told Mr.
19 Jaffe that it was waste material and you heard Mr. Jaffe's
20 testimony that he was not told that it was waste material.
21 We submit to you that the ultimate conclusion you should
22 draw from that area of testimony is that Mr. Spada was
23 not being entirely candid with you, that he had changed
24 his testimony and that his former testimony in the grand
25 jury that it was 1 or 1A stone was the real truthful

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testimony, and that for some reason or other he decided that he should change his testimony by the time he came here before you to give testimony in this trial.

Ultimately, the Government submits to you that you are certainly entitled to conclude, and indeed you should conclude beyond any doubt that the material that was hauled up there was the material that Mr. Daley would like to make his driveway with and that was stone.

You are also entitled to conclude that if he had really wanted just fill, just junk of some sort, he would have gotten that from nearby. He wouldn't have had them haul it 60 miles away.

All right, ladies and gentlemen, what's the next fact that seems to be disputed? That is what the situation is with the timber. It is clear again that Mr. Daley got timbers of some value. You have seen those in the photographs. Mr. Daley's position is, apparently, that he didn't use the timbers and therefore that means they are of somewhat less value.

The Government submits to you that the relevant question before you is whether he got the timbers, and whether the evidence indicates that he wanted to receive the timbers, or the evidence shows that he certainly didn't tell anybody to take those timbers. He certainly

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1 didn't say, "Hey, I don't want those timbers". That
2 indicates to you that he accepted the timbers. In addi-
3 tion, there has been an enormous amount of testimony
4 that it is well-known to a number of people, anyway, and
5 we would submit you could find it was well-known to Mr.
6 Daley, that the white 12 x 12 timbers were used by a number
7 of employers around the area, and it certainly should be
8 clear to you that Mr. Daley must have known that when he
9 got those 12 x 12 timbers, all painted white, that they
10 were coming from employers in that area, because -- at
11 least we haven't heard any other place he could have gotten
12 any such timbers.

14 You recall the testimony was, and as I say it
15 was somewhat confusing concerning the timbers, and that
16 is first of all Mr. Kozlowski said that he got 12 x 12
17 timbers from the Maggiola yard. Mr. Hahn said he wasn't
18 there when the timbers were delivered, but he didn't
19 think that he had agreed to give any 12 x 12 timbers.

20 Then you recall that it was clear that the Cal-
21 lanan Company paid the expenses of delivering these timbers,
22 that is, they paid the expenses of the truck that went
23 down driven by Mr. Kozlowski.

24 Then you recall the other testimony concerning
25 the other delivery of timbers that apparently occurred there-

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1 after was that those timbers had come from the Callanan
2 Company, and you recall Mr. DiMeo, the operating engineer
3 fellow, said he had seen the timbers put on and he had
4 been consulted about them and they were long white timbers,
5 the kind they ordinarily used.
6

7 You will recall the testimony of Mr. Fitzgerald
8 saying that he didn't see the timbers actually leave the
9 area, but he thought they were waste timbers.

10 Then you recall the testimony of Harley Williams.
11 What did he testify? He said he was the Number 1 driver
12 for Mr. Spada, and he testified that all of these timbers
13 were chopped up in little chunks. Certainly, he said, that
14 the timbers couldn't have been any 15 or 20 feet because
15 he said that then they couldn't fit on his truck.

16 You have substantial doubts about that testi-
17 mony, we would submit, because first of all you will recall
18 even Mr. Spada who appeared to be doing everything he could
19 to help Mr. Daley, testified that the tailgate can flip
20 down on the backs of these trucks and the bed on the truck
21 is a very large bed, and consequently there wouldn't be any
22 trouble you could find putting a 15 or 17 foot timber on
23 the back of those trucks,

24 Secondly, you have got the actual photographs
25 in evidence that show the timbers up there. That proves

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1
2 to you that some of the people, either the Maggiola
3 people who are telling you they only ship waste timbers or
4 Mr. Williams, who is telling you that he only delivered
5 waste timbers covering all of the deliveries that we know
6 about, somebody is not being accurate in this testimony,
7 because you have very powerful evidence that the timbers
8 evidently got there.

9 What do you do with the fact that Mr. Daley
10 says "I didn't want the timbers. " The Government sub-
11 mits to you that the reason why he might just accept anything
12 up there without a substantial regard as to whether or not
13 he has got any important use for it or accept it without
14 really figuring out whether he has any substantial use
15 for it is why? Because the price is right, isn't it,
16 ladies and gentlemen? He is not paying for it, is he?
17 Why do we ordinarily spend a lot of time figuring out
18 whether we really need something and making sure that it
19 is exactly what we want? We do it because we have to pay
20 for it, and we don't want to pay for it if it is not any
21 good, if it is not going to fit or if it is not what he
22 wants.

23 On the other hand, if it is just there for the
24 asking, if you just say, "Hey, I'd like a few of those
25 timbers, get them up here", then it is not a great in-

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1 convenience if you can't use them, that is not a great
2 inconvenience to Mr. Daley.

3
4 It may be an inconvenience to Mr. Kozlowski
5 who has to bring them up. It may be an inconvenience to
6 the Callanan Company that is paying Mr. Kozlowski six bucks
7 an hour and his trucks eight bucks and hour for the
8 drive all the way to Pearl River to pick them up and all
9 the way up to Kingston to deliver them.

10 It may be an inconvenience to the Callanan
11 Company when they are paying Mr. Williams to go deliver the
12 timbers, but it really doesn't make a whole lot of differ-
13 ence to Mr. Daley because all he has done is say, "Gee,
14 I'd like a few of those timbers".

15 So, ladies and gentlemen, the Government
16 would submit to you that you shouldn't be too concerned --
17 you should consider all the facts in the case, but the
18 facts that the timbers sat there and were not used is not
19 something that you should regard as determinative of the
20 light in which you look at the timber situation.

21 All right, ladies and gentlemen. Let's look
22 at the next question which the Government would submit
23 is in dispute in the case, and apparently very much in
24 dispute. That is why did everybody do this for Mr.
25 Daley? The Government submits to you that they did it

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2 as a business matter, that they did it out of the same concern
3 and interest that causes people to do what they ordinarily
4 do in their business and professional affairs, because
5 they thought that by not doing it they would be financially
6 injured, that it could have an adverse effect on them finan-
7 cially and that by doing it, it could very substantially
8 benefit them financially.

9 In substance, it was the fear of the union power
10 that caused them to do it.

11 There is one thing I would like to make very
12 clear here at the outset, and that is that the Government
13 is not suggesting to you, and we are not trying to prove
14 and we are not contending that it was fear of Mr.Daley
15 alone that caused the truckers, the drivers, the cement
16 company to part with the goods and services that they parted
17 with.

18 Rather, Mr.Daley has got a more powerful posi-
19 tion or situation than that.

20
21 (continued on next page.)

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Daley

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2 No. 1, he is the boss of the union and he is
3 pretty powerful all by himself. No. 2, he has got Tony
4 Alecca who is the business representative here, and he is
5 even more influential in that Kingston area perhaps
6 more directly influential than Mr. Daley is. Then, in
7 addition, we have Mr. Clausi who is the shop steward
8 in this particular situation. He also has a certain amount
9 of power over those truckers. You ought to recognize,
10 ladies and gentlemen, that when the word goes out that
11 Mr. Daley wants the drivers, it doesn't go out along
12 any informal lines, it doesn't go out, "Hey Bill, my old
13 pal, how about giving me some trucks, or how about giving
14 me some sand and gravel".

15 It goes right down the chain of command,
16 ladies and gentlemen, just like a military operation,
17 from the head man to the president and business agent
18 down to the shop steward. That's how it goes, and we
19 would submit to you that that is very indicative of the
20 force of the influence that was operating and which
21 stimulated the material to go up from Kingston to Windham.

22 You may also find that when the drivers tes-
23 tified that they had various kinds of information or
24 concern or anxiety, whatever they said, that they so
25 testified and they didn't say that they were afraid

1 2 ewsr

2 particularly of Mr. Daley because if you were in a driver's
3 position in this situation it wouldn't make a whole lot
4 of sense for you to say to yourself, "Gee, who is it
5 I am afraid of here"? Where is the concern? Is it Mr.
6 Clausi, is it Daley, is it Alecca? All three of them
7 put together are a force that you cannot contend with.
8 Consequently, when you look at the testimony you should
9 bear in mind, you should use your common sense and say
10 what's operating here, why is it these fellows are going
11 up on Labor Day weekend, why are they giving up their
12 Friday night and coming back at one or two o'clock in
13 the morning? Why are they going out the next Saturday
14 afternoon. Why is it that the following Friday they
15 go out at night and load up the trucks and then leave
16 the following Friday -- Saturday morning at five o'clock
17 in the morning to haul all of this stone? Why do they
18 do that?

19 You use your common sense, ladies and
20 gentlemen, and it tells you why they are doing that.
21 They are doing it out of the very concern that we referred
22 to originally. As Joseph Forte, one of the drivers put
23 it, if he didn't go, he didn't know what was going to happen
24 and he didn't want to find out.

25 I would submit, ladies and gentlemen, that

1 3 over
2 that is a pretty accurate statement of what any reasonable
3 driver would have thought in this situation. Go along
4 with the program, and it is a lot more important to
5 haul a few loads of stone than it is to get yourself in
6 a tight spot and maybe not get the calls from the union.

7 What did the witnesses testify on that
8 score? You will recall Clausi said that the feeling
9 around the union hall was you do what you are told and
10 he was concerned about his family. Bockelmann said he
11 did it too, since it is my job. If I didn't go maybe
12 there wouldn't be any work for me. Stewart said Clausi
13 told him specifically if you want a job you better go,
14 and Stewart said that he felt that if he didn't
15 go he might not gain employment through the union.
16 Qualtere said Clausi told him that you go or else you
17 don't work. Sutton said something similar, that Clausi
18 had told him something similar. Kozlowski testified that
19 he went out of concern for himself and his own business
20 and also out of concern for the drivers that were working
21 for him because he recognized that if the drivers --
22 if he didn't get any calls, then the drivers that were
23 working for him wouldn't get any calls. Naccarato, who
24 delivered the equipment back and forth to Mr. Daley,
25 testified he did it both out of friendship and because

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2 he might not get a steady job later if he didn't do it,
3 and you recall he had about a 170 mile trip.

4 Ladies and gentlemen, it is true, I think as
5 in the Government's case it was shown that some of the
6 drivers declined to go. They didn't all go. The Govern-
7 ment would submit to you that that's another entirely
8 normal and expectable fact. When you have a situation
9 that creates a certain amount of fear, some people are
10 more scared than others, that's natural. They all have
11 their own situations to think about.

12 You will recall that Leland Eaton testified
13 that he refused to go and then he ultimately just went
14 over, picked up a load and parked it in Spada's lot. Why?
15 Because he said he knew he was a mechanic, he knew Spada
16 couldn't afford to fire him and so he felt he was in an
17 immune type of position. He wasn't just like all the
18 other drivers.

19 You will recall that Mr. Kozlowski, when
20 he testified, said he had a mechanic named Sid Grant. He
21 didn't even ask Grant to go, he testified, because he
22 was a mechanic and he was working on the trucks and
23 he was more valuable there, so some fellows felt they were
24 in a position that was somewhat protected. They didn't
25 feel the ordinary fear.

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2 What other testimony did you have? You had
3 Mr. Brennan. We would submit that you could just find he
4 was not the kind of fellow who gets scared very easily.
5 He said he just wasn't going to go. Does the fact that in
6 a situation designed -- not designed, but which by its
7 nature puts pressure on people and puts pressure on people
8 that's pretty obvious pressure that anybody can figure
9 out, does it mean just because one person bucks the
10 pressure and doesn't cave in, does that mean there isn't
11 any pressure there? Does that mean that all of the fellows
12 who did drive up were just totally out of their minds
13 for doing it?

14 The Government submits to you is that all it
15 means is that some people scare more easily than others
16 and you may well conclude that the reason the people who
17 did go along with the program did so because of fear of
18 financial injury if they didn't and that that fear was
19 reasonable. The Government is not contending, and we
20 submit it shouldn't be required by you that a picture
21 had to be drawn for these drivers that they had to get
22 out there and give them a document signed by Ted Daley
23 saying I am going to fire anybody who doesn't go in
24 order for the drivers to get the picture.

25 The Government submits that when you look at it,

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2 in light of your common sense and your experience you
3 recognize that that fear is going to be there, and
4 besides that, ladies and gentlemen, you recognize that
5 anybody who is a marginally sensitive person is going
6 to recognize that that fear is going to be there.

7 Do you believe Mr. Daley, just to digress for
8 a moment? Did you believe him when he said, the high
9 powerful man in the union, the man who was doing all of
10 this negotiating back and forth, when he told you that
11 he didn't think that any of these drivers might feel that
12 whether or not they went on this trip would have an effect
13 on their future in the union? Did you believe that?

14 Let's go a little further here on this point.
15 The defense submits, apparently, that there was no
16 proof of actual retaliation against anybody who refused
17 to go. The evidence is quite clear that that's true.
18 The Government, however, did not set out to prove re-
19 taliation. The Government submits that it is not required
20 to prove retaliation.

21 What we are required to prove is the fear
22 and the fear is reasonableness, and that, we would submit,
23 has been proved. In addition, we submit that you did
24 have some evidence that shows why we shouldn't be required
25 by you to prove actual retaliation, and that came in the

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2 testimony of Mr. Ebert. Do you recall he was called as
3 a defense witness and he told you about all of the
4 factors that he has to think about in deciding whether
5 to put a man on a job or not, when his Social Security
6 payments are going to run out, whether his kids are sick.

7 There must have been two or three other factors.
8 you can hear them read back in case you are interested
9 in them. The Government submits to you that there were
10 a couple of big points you should have noted there.
11 They were consistent with the other evidence. One is
12 that there is no job list in this union so that you can
13 say, "Hay, I should have had that job. I should have
14 been called, and you didn't call me and that's wrong,"
15 and get some kind of explanation. There is nothing like
16 that in this union. It is all whether the guy's kids
17 are sick, how close he is located to the particular job
18 and all of that sort of thing, so that whenever somebody
19 doesn't get hired and they feel they are entitled to
20 an explanation, is there any doubt in your minds that Mr.
21 Ebert or Mr. Daley or somebody else can come up with five
22 or six different reasons that are going to make absolutely
23 no sense whatever and explain to that fellow why he
24 didn't get that job?

25 Those, we would submit to you -- Mr. Ebert's

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2 testimony amounted to nothing more when you as responsible
3 people evaluated that a statement that the people who
4 are going to work are deciding in Mr. Ebert's discretion.
5 Nobody reviews it unless maybe it is Mr. Daley, and he
6 puts on who he feels he'd like to put on. That's the
7 way we would submit you should evaluate that situation.

8 You also heard testimony from Mr. Kozlowski
9 and the testimony there was that Mr. Kozlowski bucked the
10 union and he went out of business. You heard testimony
11 from Mr. Spada that he is making about \$180,000, or in
12 one year he did make \$180,000.

13 Of course, Mr. Spada testified that he got all
14 those jobs not through the union. The Government cer-
15 tainly didn't set out to prove that Mr. Spada got all
16 of his jobs through the union. We would submit there
17 was some other proof that shows that it doesn't make any
18 difference whether he got all of his jobs through the
19 union.

20 Do you remember the incident with Mr. Costanzi,
21 and I am not sure what it is relevant to show other than
22 this, but I submit that it does show you this:

23 Mr. Costanzi was employing Mr. Kozlowski's
24 trucks and they had a dispute with the union and there
25 was this wage and pension fund dispute, and whatever

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2 relevance that has I am not quite sure, but one thing
3 did come out of it at the end of it, entirely unrelated,
4 apparently, to the wage and pension dispute was that in
5 the future "Mr. Costanzi, you are going to employ partly
6 Spada's trucks and partly Kozlowski's trucks. You are
7 not going to employ just Kozlowski's trucks any more."

8 Now, when Mr. Spada was working on this Halmark
9 job or all these other jobs, did you hear any testimony
10 about Mr. Daley interceding for him and saying "Hey,
11 stop this, don't just employ Spada's trucks, get in there
12 with Kozlowski's trucks, divide up the business". Did
13 you hear anything about that? No, you didn't.

14 It doesn't make any difference necessarily
15 exactly how you get the job. The point is that the union
16 is powerful enough in this particular area to have the
17 substantial effect on what the profits of those little
18 trucking companies are going to be. When you look at Mr.
19 Spada's \$180,000 income we'd submit you are entitled to
20 put that fact together with what would appear to be a
21 conscious desire to deceive you on Mr. Spada's part when
22 he testified in front of you.

23 Ladies and gentlemen, the Government submits
24 that you may well find that this was another example of
25 Mr. Daley's power in the situation, that Mr. Spada is on

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the gravy train, ladies and gentlemen, and that's why he testified the way he did. That's why his No. 1 driver came down here and testified the way he did, and ladies and gentlemen, they were delivering the testimony just the way they delivered the stone, and that's what you can draw from that situation, ladies and gentlemen.

[Continued on next page.]

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2 Now, what about the alternative explanation
3 of what was going on here? Remember in his opening Mr.
4 Newman said that he was going to prove that this was a
5 tight little community where Mr. Daley lives and where
6 Mr. Daley is an active, viable part of that community,
7 a tight community where people help each other out and
8 where people do things for each other and that these
9 trucking incidents were a "neighborly gesture".

10 Ladies and gentlemen, if you believe that
11 you walk right in there and you acquit Mr. Daley. The
12 Government submits, however, the evidence is perfectly
13 clear that they were not any neighborly gestures and
14 you cannot accept that for one second.

15 Just to look at the technicalities of it for
16 a minute, the evidence is pretty obvious that Mr. Daley
17 wasn't a neighbor up there, was he? These weren't his
18 neighbors that were delivering the stone. These weren't
19 the other executives on the board where he may have helped
20 them hang their shingles or do whatever he did. These
21 were fellows that he had never helped at all except,
22 I suppose, if you figure because he is the head of the
23 union he has helped them out in that respect and therefore
24 along with being the head of the union you are entitled
25 to have all the guys in the union do whatever work around

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2 the house you feel that you would like to have done.

3 Ladies and gentlemen, the Government submits
4 to you that the evidence is pretty clear that there
5 were no indications that this was a "neighborly gesture."

6 What about Mr. Newman's suggestion on cross-
7 examination that these fellows were looking for a night
8 out with t 2 Do you think that's why they were
9 driving up c to Windham? The Government submits
10 that that's just about as reasonable an explanation as
11 the neighborly gesture explanation.

12 What about the proof that apparently the
13 defense was attempting to elicit that other people in
14 the union were doing the same thing, that Mr. Alecca was
15 doing the same thing and Mr. Ebert was doing the same
16 thing?

17 I have two suggestions to make to you on that
18 score. No. 1, there is no evidence in this record that
19 anybody was doing it on the scale that Mr. Daley was
20 doing it. He was the top dog in this category, make
21 no mistake about that.

22 No. 2, suppose everybody else in the union
23 was doing it. Suppose Mr. Alecca was doing it. Suppose
24 Mr. Ebert was getting his fence fixed and plumbing done
25 by members of the union al for free. Does that make it

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2 right? The Government submits it does not make it right,
3 and all it shows in this situation, ladies and gentlemen,
4 is that this form of corruption started at the top and
5 in this case that's where it ended, and that's whose
6 benefit it was for so if anybody felt they didn't like
7 doing Mr. Ebert's plumbing, if they felt they didn't
8 like fixing his fence or they felt they didn't like doing
9 something for Mr. Alecca there sure wasn't any place to
10 go, because if they complained to Mr. Daley they might
11 get asked to work on the driveway. So, ladies and
12 gentlemen, just don't get drawn off into making this
13 a trial of somebody else and suggesting that maybe the
14 fact that all of these fellows were doing it makes any
15 difference, even if you think that is proved, and the
16 Government submits there has been no substantial proof
17 of that.

18 What about this cash payment? Mr. Daley at
19 the time all the evidence is in now comes up with the
20 story that he made this payment to Mr. Alecca. Quite
21 frankly, the Government asks you to reject that testimony
22 and find that he made no such payment to Mr. Alecca.

23 I would like to point out that it is clear that
24 the drivers didn't know anything about any such payment
25 at the time they did the driving. They didn't do the

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2 driving thinking they were going to get paid. They did
3 the driving thinking it was part of a union program
4 and they had no choice. There wasn't any testimony
5 that anybody offered them any payment or that they ex-
6 pected any payment because they knew what the situation
7 was.

8 Well, let's look at this. Do you believe that
9 testimony that the payment was made? Mr. Davis we would
10 submit did not give you any real testimony. He just
11 couldn't find it in himself to come forward and say that
12 he really saw the payment. So it really boils down
13 to whether you accept Mr. Daley's story that the payment
14 was made.

15 We would submit, first of all, it is rather
16 implausible on its face. You saw Mr. Daley come in here
17 with his little green accordion, whatever it is, file
18 bag and he had all of these little tickets, and the little
19 tickets are for the purpose of establishing when he
20 increases the cash base or cash value of his house, and
21 he keeps those all very carefully even to the point when
22 he makes a payment in cash he gets a receipt back that is
23 signed by somebody so he can show whoever is going to
24 buy that house. But he tells us he didn't get such a
25 receipt back in this case because he didn't think he

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2 needed it from Mr. Alecca. Obviously, ladies and gentle-
3 men, you know that when you are keeping your personal
4 records of this sort you like to have a record right there
5 if that is the kind of person you are, and you are not
6 going to tell the buyer, "Hey, call up Tony Alecca and
7 he will tell you about this story about the driveway and
8 how it is worth this and the other thing."

9 You want to have some kind of record of that.
10 In the ordinary course of events it would be to pay for
11 the thing by check, we would submit, or to get some kind
12 of a receipt back, some kind of a document.

13 All right. Now I suppose that we are going
14 to hear that Mr. Daley is the kind of fellow who normally
15 carries around or likes to pay, if he doesn't carry
16 it around, he likes to pay bills of this sort in cash.
17 We would submit that you should question that testimony.

18 But let's go a little bit further or why the
19 Government submits this didn't happen. Think about it
20 for a minute from Mr. Alecca's point of view. Incidentally
21 he was never asked "Did you get an \$800 payment?" He
22 was asked something about a \$400 payment. By the time
23 Mr. Daley got on the stand it was an \$800 payment.

24 In any event, look at it from Mr. Alecca's
25 point of view for a moment, back in 1971 when it is

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2 claimed that this payment was made, Mr. Alecca was the
3 president of the union, very close to Mr. Daley, and he
4 was riding high and they were doing just fine together.

5 Now, by doing what Mr. Daley is suggesting
6 happened, taking the payment and keeping it and not
7 giving it to the drivers that Mr. Daley testified was
8 supposed to have been done, Mr. Alecca creates a situa-
9 tion where if any of those fifteen or twenty or 25 drivers
10 should happen to tell Mr. Daley or tell somebody else
11 in this small community where word gets around real
12 fast that they didn't get their money, that it is going
13 to get back to Mr. Daley, he is going to find out about
14 it and he is going to say to Mr. Alecca, "Hey, you have
15 been stealing money from me."

16 Why take a chance like that, ladies and
17 gentlemen? Why take a chance like that? Does that seem
18 reasonable? And when you are evaluating the credibility
19 of testimony you have to look at what is plausible, what
20 makes sense to you, and the Government would submit that
21 it just doesn't make very much sense from Mr. Alecca's
22 point of view for him to put himself in a position like
23 that for that amount of money.

24 If Mr. Daley had said "Here, give out the
25 money," the Government submits to you the obvious sensible

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2 thing for Alecca to do would be to give out the money,
3 because he didn't know whether Mr. Daley a week from now
4 might be at a union meeting or a week from this alleged
5 payment might be at a union meeting and might find some-
6 body telling him that he didn't get any money, big
7 Mike Spada talking to him and Ted says "How did you like
8 the dinner I treated you to" or something like that and
9 Mike Spada says "What dinner? I don't know what you
10 are talking about."

11 There goes Tony Alecca at that point,
12 ladies and gentlemen. It doesn't make sense he will put
13 himself in that kind of position. Consequently, you
14 should say to yourself that this just isn't the sensible
15 kind of thing that happens in the real world that we
16 can expect might happen if somebody is going to steal
17 money, they are not going to steal it in a situation where
18 any one of fifteen people can throw the spotlight on it.

19 Rather, what we would submit you should find
20 happened in this case is Mr. Daley knew he got the
21 trucking and the driving and the gasoline and the gravel
22 and everything else without paying for it, he never
23 intended to pay for it, he never did pay for it, and it
24 was all part of going along with the union program.

25 Another area of controversy in this case,

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2 ladies and gentlemen, is whether Mr. Daley was asking
3 for this driveway or, on the other hand, was Mr. Alecca
4 sort of pushing it on him, and your common sense will
5 tell you that if you have two people, one fellow owns a
6 house and he wants a driveway, he is the one that is
7 saying, "Hey, get me the stone for the driveway and get
8 the driveway up here. I don't like the fact my car is
9 getting stuck in the driveway."

10 Are people likely to be running around, "Gee,
11 we can put together a project here that is going to
12 require us to drive all night on Friday night, get
13 up early the next morning, then drive the next afternoon,
14 waste a Saturday afternoon hauling stone for Ted Daley,
15 and then we are going to have to get up five o'clock
16 the next Saturday morning" all when he is not saying
17 that he wants it done, when he is just sort of sitting
18 there saying, "If you fellows would like to do that,
19 that's okay."

20 Come on, ladies and gentlemen, the Government
21 submits to you that you hve more sense than that and
22 you recognize that that wasn't what was going on in this
23 case. And if you have any doubt about the fact that Mr.
24 Daley is trying to represent to you that that's what's
25 happening, just listen to some of his testimony reread,

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2 particularly in the area of his cross-examination. This is
3 a rigorous job. It was a heavy job. It was a job that
4 would have been expensive. It was a job that required
5 the union people to some extent to put themselves on the
6 line by going to the employers and saying "How about pro-
7 ducing this stuff?"

8 They are not doing it unless somebody asks
9 them to do it and that somebody has to be somebody that is
10 pretty significant in that union. So when Mr. Daley
11 is saying that he really didn't ask for it, we would
12 submit that you ought to reject that testimony as well.

13 What about the telephone conversation that
14 Mr. Clausi told you about? You recall he said he got a
15 phone call something like six o'clock in the morning.
16 Well, first of all, of course the crime is not talking
17 on the telephone. So it is questionable exactly how
18 much significance you attach to that particular phone
19 conversation, but let's look at it anyway.

20 First of all, we would submit to you Mr.
21 Clausi had no reason to make up the phone conversation.
22 He is in court. It was conceded he met Alecca the
23 night before. If he wanted to say Alecca told him at
24 that time to bring more stone, he could have said that.
25 He doesn't have to make up a phone conversation.

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2 Another thing to think about, ladies and
3 gentlemen, Clausi saw Daley going down the mountain.
4 Assume with me for just a moment that this entire thing
5 is a frame and he is trying to make it up. All right.
6 He sees Daley going down the mountain and he doesn't see
7 him going back up and he comes into Federal Court and
8 swears that he had a phone conversation where Daley
9 says he wants more stone, implying that Mr. Daley has
10 been up there and has seen the stone since it was de-
11 livered and has seen that there is another area that
12 needs to be done that isn't finished, the job's not done.

13 Mr. Clausi can tell that if Mr. Daley has
14 got a witness who can testify that he didn't go up there
15 any more that night, that he was somewhere else that night,
16 that that is going to show Mr. Clausi's story is not
17 true. You didn't hear him say that on the witness stand,
18 did you, ladies and gentlemen?

19 The Government is not contending it is the
20 responsibility of the defense to call witnesses. The
21 Government's responsibility is to prove the case beyond
22 a reasonable doubt, but the Government submits to you
23 that you may well find that if Mr. Daley had a witness
24 who was going to testify that on that evening he was
25 home or he was somewhere else at a time other than at

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2 that cabin up up in Windham and he couldn't have gotter.
3 up there before ten or eleven o'clock the next day,
4 you can bet your bottom dollar you would have heard
5 from that witness. The Government submits to you the
6 reason you didn't hear it is because Mr. Daley in some
7 way got back up to that cabin that night, looked at the
8 job that was done and called up Clausi and said, "Fellows,
9 we need more stone. You had better get some more stone
10 up here."

11 Now, let's look at it from another angle. You
12 know very well that Clausi is running around making
13 telephone conversation the next morning. You know
14 very well that he is organizing all these trucks. You
15 now that Alecca is in the hospital at this point and
16 is not really participating in this operation.

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2 How else is Clausi going to find out that
3 they need more stone up there? There is no evidence
4 that Clausi knew where they wanted the driveway. There is
5 no evidence that Clausi knew anything about how much stone
6 they wanted up there. He is the delivery man. He is
7 leading the trucks. He doesn't know if it is a circular
8 driveway, a square driveway, a straight driveway, a round
9 driveway. He didn't know anything about that.

10 Who knows?

11 Well, Mr. Daley knows, doesn't he? And Mr.
12 Alecca knows, but Mr. Alecca is in the hospital and Mr.
13 Alecca hasn't gone up there to see how much stone they
14 delivered the first night. We submit you would have to
15 find that there was some way that Clausi got the word that
16 they needed more stone and that the only person that that
17 word could have come from was from Mr. Daley.

18 Now, apparently the defense is telling us or
19 we may be told that this whole thing is a complete frameup
20 of some sort, Mr. Daley has been framed. We ask you to
21 look at that proposition, and that is what the suggestion
22 here is, that this is a complete fabrication and that
23 he really paid and he didn't get anything for nothing,
24 we ask you to examine that proposition very carefully
25 before you think about the possibility of accepting it.

qwb-2

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2 When you are looking at the credibility of
3 these witnesses, we ask you to look at their demeanor, we
4 ask you to look at how they testified on the witness
5 stand, and also not only their demeanor, but what they
6 said, whether it seems plausible to you or whether it
7 seemed inconsistent with your experience and your know-
8 ledge of human nature and the ways of the world. We ask
9 you to look at the interest they have in the case, and look
10 at the prior statements of the witnesses.

11 There were statements in certain situations which
12 we would submit showed that the witnesses had made funda-
13 mental changes in their testimony, whereas, on the other
14 hand, certain prior statements were shown to be relatively
15 minor changes in their testimony or perhaps not even
16 changes at all.

17 We ask you to look at how it fits. Some of
18 this testimony fits with the other credible evidence in
19 the case. We submit when you do that you will find that
20 the defense witnesses, several of them, in any event,
21 were not credible.

22 First of all, I have already talked about Mr.
23 Spada.

24 Secondly, there is Mr. Williams, and you know
25 there is substantial doubts about his testimony both because

1 gwh-3

2 of his position with Mr. Spada and also the fact he told
3 you these little chunks were delivered up there and you
4 have the photographs that show there were some long
5 timbers up there and he denied delivering those.

6 Then you have not the testimony of Mr. Daley.
7 We would ask you to reject that testimony. We submit to
8 you that it is in large part not credible testimony,
9 first of all, based on his demeanor, which you observed
10 as well as everybody else.

11 We submit to you he was not forthright and
12 candid in the way he answered the questions. There was
13 a lot of hesitation there, a lot of refusal to answer the
14 questions, a lot of getting around the questions in one
15 way or another. That is a judgment for you to make.

16 Also, ask yourselves whether you believe a number
17 of things that Mr. Daley said. Where he said that after
18 the first and second deliveries, you recall, on September
19 3 and September 4, and before the third delivery, the
20 intervening week there, he did not talk to Alecca about
21 whether or not he needed more stone. Do you believe that?
22 Do you believe as he is pushing the stone around up there
23 on the night of September 4th, he doesn't pay any attention
24 to whether the job is done or not? Do you think he is
25 being candid with you and forthright when he tells you

1 qwb-4

2 that?

3 Do you think he is being candid with you
4 when he tells you that he didn't think about why the
5 drivers were driving up there without any pay and it never
6 occurred to him that they might be sacrificing a Labor
7 Day weekend because of an economic consideration?

8 Do you think he is being truthful when he
9 says that the arrival of the wood was a complete surprise
10 to him when Kozlowski delivered it and he didn't want it
11 at all, had no use for it, didn't know why it was coming
12 up there, but at the same time didn't tell Mr. Kozlowski
13 just to take this wood away and get rid of it somewhere?

14 The Government submits to you that obviously
15 if he didn't want the wood he could have just said so at
16 that point.

17 Look at all the things that Mr. Daley said that
18 he didn't know and keep in mind, by the way, that this
19 man is a high union official. He is at the bargaining
20 table with these companies. It is part of his job to
21 figure out not only what is on the table but what, if any-
22 thing, is under the table. It is part of his job to figure
23 out what the other guy is thinking, "and if I go here and
24 raise it here, what's the other guy going to do?"

25 He is required to think about things like this.

1 gwh-5

2 What do you think about some of the testimony
3 that he didn't talk to Alecca and Clausi about how many
4 truckloads of stone he would need or about where the
5 driveway was going to go, that it was Alecca, apparently,
6 he is telling us, who decided where this driveway was going
7 to be? That he never talked to Alecca about where he
8 was getting the stone from, that he had no idea at all
9 where Alecca was getting that stone from, that, indeed,
10 he didn't think about where Alecca was getting the stone
11 from.

12 Picture yourselves, ladies and gentlemen,
13 as a high teamsters union official knowing your men do
14 a lot of work for construction companies that sell gravel
15 and other kinds of stone, and all of a sudden y our fellows
16 are trucking stone up that mountain like crazy, it is just
17 coming up so many loads of it, it is hard for us to
18 even count, and you don't ever think that maybe, just maybe,
19 that is coming from an employer?

20 Ladies and gentlemen, do you think that is
21 truthful testimony?

22 When he testified to you that although he knew
23 the precise date -- precise date -- of the enactment of a
24 particular piece of labor legislation, he had no idea that
25 there was anything wrong with a labor union official

1 cwb-6

2 official taking gifts from an employer and that he not
3 only didn't know that it was illegal, he didn't even think
4 there was anything wrong with it, despite the fact, of
5 course, that he has never done it.

6 Does that seem like credible testimony to you
7 or does that seem like he is trying to walk on both sides
8 of the line to keep all the bases covered and come up
9 with a very convenient story?

10 The Government submits to you that funda-
11 mentally when you come down to the final decision in this
12 case, what you have to decide is whether this is a situa-
13 tion where some people didn't like the way they were being
14 treated by Mr. Daley and whether they were right or wrong
15 has nothing to do with the case as far as that goes, but they
16 were annoyed, they were irritated, they were angry, you
17 might even say they were vindictive, and what did they do,
18 they squealed on him.

19 That's what happened in this case. And the
20 Government submits that that is the way you should look
21 at it rather than thinking that they went out and invented
22 a whole proposition and came into Federal Court and
23 committed perjury all over the place just to get back at
24 Mr. Daley, and we suggest you reject that proposition
25 because that is what you have to do in order to accept

1 qwb-7

2 Mr. Daley's explanation. You would have to decide
3 that Mr. Alecca is lying, you would have to decide
4 Mr. Clausi is lying, you would have to decide, in addition,
5 that Mr. Kozlowski may be lying on a number of facts.

6 The Government would submit that you should
7 reject that analysis.

8 Besides the credibility there really isn't
9 very much to the defense in this case, is there? There
10 are a number of bills about other construction that Mr.
11 Daley paid. You know, the Government didn't start out
12 in this case to try to prove Mr. Daley never paid a bill.
13 The Government said that there was one thing he didn't
14 pay for, and that is what you are asked to decide.

15 Bringing in all of those other construction
16 bills proves about as much as if he brought in his Con-Ed
17 bill and said that he paid for it, because we didn't say
18 he didn't pay for those bills.

19 What about those character witnesses? Well,
20 certainly they were very nice people. They did what
21 they thought was their public responsibility and the
22 Government has made no substantial attack on the
23 character witnesses. We would offer, however, for you
24 a couple of observations.

25 One is that those character witnesses certainly

1 qwb-8

2 didn't have the chance to observe Mr. Daley the way you
3 had a chance to observe Mr. Daley.

4 On the question of his veracity, on the question
5 of his honesty, on the question of how he deals in that
6 union, those character witnesses know about one-tenth
7 of what you know. They didn't hear Mr. Daley get up
8 here on this witness stand and say that he paid back all
9 of the money that he had been accused of improperly spending
10 from the union funds without the threat of trusteeship,
11 only to receive in evidence, and it is indeed in evidence
12 now, a letter signed by Mr. Daley in which he
13 says in black and white that he paid that money back out of
14 the threat of trusteeship, because of a threat of trustee-
15 ship.

16 The character witnesses didn't see that. They
17 didn't hear the testimony that you have heard in this
18 case. And so although it may be true, ladies and gentle-
19 men, that Mr. Daley is a man of power, that he is a man
20 of influence, that to the exterior world he has presented
21 a very favorable and a very desirable appearance, the
22 Government submits that when you come right down to
23 deciding how the issues go in this case, the character
24 witnesses bear some consideration but they are not the
25 overriding consideration that you should take into account

1 gwb-9

2 and the conclusions that you should come to here is that
3 Mr. Daley did exactly what he was charged with.

4 I wanted to mention my thinking on the charac-
5 ter. We talked a good bit about -- and I am sure you
6 wondered why we were talking about -- this dispute with the
7 International concerning the misuse of union funds.
8 We talked about that in a way that the Government submits
9 has two relevant considerations for you. First of
10 all, that obviously is something that anybody who is going
11 to testify about the man's reputation or who knew about
12 an opinion as to his honesty should have known about, and
13 most of the people didn't know about it.

14 Number 2, in assessing his credibility, in
15 assessing the forthrightness and honesty of his testimony
16 or the absence thereof, you have to look at how he explained
17 that situation, and he attempted to explain it away as
18 though it were nothing at all, particularly on the idea
19 of paying back the money, and he denied time and time
20 again that he did it under a threat of trusteeship.

21 And what did he say in the letter? He said,
22 "I and others have reimbursed the local union for the full
23 amount in July, '74, without prejudice to all of the rights
24 of each of the members making such reimbursement because
25 of the threat of trusteeship, and further because we

gwb-10

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believed that this would conclude the matter."

Clearly, ladies and gentlemen, he was either not being truthful with you when he testified or he wasn't being truthful with the International presidency when he wrote them that letter, and that is something that you are entitled to consider in assessing the credibility of this man who has testified before you.

Certainly you want to consider, perhaps, the testimony of other witnesses who testified that certain of the Government witnesses had a bad character for truthfulness. Mr. Kozlowski, I think, said that Mr. Clausi wasn't truthful; Mr. Clausi said that Mr. Kozlowski wasn't very truthful; and certainly that indicates that those fellows don't like each other very well. But was there anything in the substance of this testimony that really impeached their credibility, that struck you as totally implausible the way some of Mr. Daley's testimony did? Were they really attacked and caught trying to deceive you in the way that Mr. Spada was? Were they caught trying to deceive you the way Mr. Daley was with that letter?

The Government submits that they were not and, therefore, you may conclude that although they don't have the power and the influence that Mr. Daley has, that

End 5B

1 qwb-11

2 indeed their testimony on the important issues in this
3 case was credible testimony and that where they made errors
4 from time to time, where Clausi's testimony was inconsistent
5 with some of the other fellows, for instance, I think
6 Clausi said he didn't threaten anybody, and a number of
7 fellows said he did threaten them, the Government would
8 submit that that does not take away from the core of the case
9 here about where the driveway was built, who got it and
10 why it got there, and what Mr. Daley knew at the time
11 that he was getting that driveway.

12 Finally, ladies and gentlemen, I would like to
13 explain to you that the Government does not contend that
14 Mr. Daley went out and did all of this on his own. We
15 recognize that an enormous amount was done in this case
16 by Mr. Clausi and Mr. Alecca acting on Mr. Daley's behalf.

17
18 (continued on next page.)
19
20
21
22
23
24
25

Tk 6A

ewb-1

1 ewb-1
2 They were acting as his agents, and the
3 Government submits that you may find and you can only find
4 that when he told them to get the driveway, to get the
5 timbers, that he was, in effect, authorizing them to do
6 what it was obvious they were going to do, go get them
7 from the employers and go lean on the union guys to get them
8 to do the work.

9 He is therefore responsible for that, par-
10 ticularly where the circumstances must have made it appar-
11 ent to him that that was exactly what was going on, unless
12 you find that he could have believed that these were a
13 bunch of fellows on a night out, or this was just a neighbor-
14 ly gesture which we would submit is not worthy of your
15 serious consideration.

16 Basically, as we told you before, the
17 Government in part here, charges a conspiracy, but
18 we don't charge that they had some kind of a written docu-
19 ment or that they exchanged any legal words like lawyers
20 might do, perhaps too many words sometimes, I suppose, I
21 would have to agree with you.

22 This is a situation where we would submit
23 actions spoke louder than words, where these fellows got
24 together and there was a lot left implicit or tacit in
25 their understanding.

1 ewb-2

2 When you put it all together, you go see it
3 as an operation to produce a driveway for Mr. Daley by
4 leaning on the people that he had the leverage over.

5 Finally, I think it was apparent to you from
6 my opening remarks that the Government also contends that
7 there was a potential effect on interstate commerce as a
8 result of all of this activity even though it was a rela-
9 tively local type of situation. That effect was not very
10 great, we agree, but it was adequate to establish the
11 required element in this case.

12 You saw evidence of interstate commerce in the
13 dealings the local had with the International Union,
14 in the fact that they were working on an interstate
15 thruway, the New York Thruway.

16 You also have to recognize the effect on inter-
17 state commerce of this whole type of activity, where
18 employers and employees know that if they move into the
19 area of Local 445 from outside that area, that they are
20 going to have to put up with the union headed by Mr. Daley,
21 with practices like Mr. Daley practices, and they may have to
22 come up with a driveway or something similar to that.

23 Finally, ladies and gentlemen, then, the
24 Government submits that, just as we started out to do, we
25 have proved the essential elements of these crimes.

ewb-3

1 ewb-3
2 First of all, Mr. Daley committed the labor
3 law violations that we indicated to you we expected to
4 prove. He received the stone. He received the trucking
5 services from Spada, and also from Kozlowski, and he also
6 received the timbers, and he didn't pay for them. He
7 received them. He was the head of the union, and they
8 came from employers that were employing members of his union.
9 We submit that his guilt on those counts is very clear.

10 In addition, on the conspiracy count, we submit
11 to you that the evidence is also clear. There was an agree-
12 ment, a tacit agreement that they were going to get this
13 driveway for Mr. Daley and that they were going to do it
14 by leaning on the people, by exploiting the fear that
15 they would naturally have in the situation.

16 Finally, the Government submits that the evi-
17 dence shows not only did they conspire to do it, but
18 they in fact did it, and Mr. Daley did indeed get the drive-
19 way that he got, as the evidence shows, and that he obtained
20 it through no force other than the fear that the ordinary
21 people reasonably felt as a result of the situation that
22 they were put in, that Mr. Daley, in many ways, was respons-
23 ible for and that fundamentally he was responsible for
24 correcting, if there was any correction to be done.
25 Not only did he not correct it, ladies and gentlemen, but the

ewb-4

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1 evidences establishes that he profited from it. He relied
2 on it.
3

4 For that reason, the Government asks that you
5 return a verdict of guilty in this case.

6 THE COURT: Thank you, Mr. Wohl.

7 Ladies and gentlemen, we will take a ten-minute
8 recess.

9 (Recess.)

10 THE COURT: Ladies and gentlemen, you have
11 given Mr. Wohl your full attention. I ask you now to give
12 Mr. Newman your full attention.

13 MR. NEWMAN: Thank you, Judge Lasker, Mr. Wohl,
14 Mr. Handal.

15 Because you are Number 1, Mr. Foreman, ladies
16 and gentlemen of the jury, don't get scared. I write big.
17 You see a lot of pages here.

18 Firstly, let me thank you for your patience.
19 I know you sat here for almost three weeks. Every once
20 in a while we would get up and go to the side bar. The
21 first time we said, "Side Bar" it is to sound very
22 glamorous. It really is not. It is just the
23 expression they use for the side of the place. They don't
24 serve drinks, they don't serve anything else there, as much
25 as we all might long for a drink.

1 ewb-5

2 What is this summation all about. This summa-
3 tion is final argument as you gathered from Mr. Wohl's
4 presentation, and what we do is, as lawyers, we tell you
5 what our recollection of the facts is.

6 Now let me tell you right at the inception,
7 if your recollection disagrees with my recollection, throw
8 mine out, take your own, disregard mine, it is of no -- as
9 we say -- evidentiary value in this case at all.

10 After I give you my version of the facts or dur-
11 ing the time that I am giving it to you, I may suggest
12 to you certain inferences that you should draw from these
13 facts.

14 The inferences may appeal to you, they may
15 not appeal to you. You may think they are off the wall.
16 You may think they are off the roof. If they appeal to
17 you, accept them. If they don't appeal to you, reject
18 them.

19 If a portion of it appeals to you, take that
20 portion, use it and apply it, but remember, it is your
21 option. I can only suggest to you what I think the
22 inferences are that flow from the facts in this case as I
23 view them.

24 Mr. Wohl spoke to you, now it is my turn.
25 When I finish speaking, Mr. Wohl will get to speak again.

1 ewb-6

2 I would like very much to get up after him,
3 and he would like very much to get up after me, but after
4 he speaks the next time the rules are nobody else speaks
5 except the Judge tomorrow morning.

6 As they say, he has the home ball park, he sets
7 the rules. That doesn't mean that I don't have answers
8 to what Mr. Wohl says, and that doesn't mean that I
9 wouldn't like the temptation of getting up and answering
10 him, but I can't.

11 So what I would like to ask you, for example,
12 to do for me, if you will, is help me out, assist me, if
13 you will. Listen to what I say. Accept those versions
14 of the facts as I give them to you that square with yours.
15 Accept those inferences that appeal to you. Take all of
16 that, apply it for me, if you will, because I can't speak
17 again to what Mr. Wohl says, and see if my recollection
18 of the facts and the inferences I suggest to you don't
19 answer what Mr. Wohl said.

20 As you were told during that mumbo-jumbo that
21 we call the voir dire, and we deliberately do it like the
22 directors do, keep it confusing, all the voir dire means
23 is the period of time Judge Lasker was asking you about
24 your personal backgrounds to decide whether you were
25 qualified to serve as jurors.

ewb-7

During that period of time you were told many expressions, that the reason you were here is because the prosecution in this case filed a piece of paper called an indictment and in this piece of paper they made certain charges against Theodore Daley and Theodore Daley came into a courtroom much the same as this, not like the one in 35, much the same as this, and said in words or substance, "I am not guilty." In the vernacular, that put the fat in the fire.

(continued on next page.)

*End 6A PM

Daley

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1 ewsr

At that moment, it became the burden of the prosecution in this case, represented by Mr. Wohl, as in every criminal case to establish the guilt of Theodore Daley beyond a reasonable doubt. How do they do that?

They have to do it by what we call credible believable substantial evidence. They can't do it by guess, and they can't do it by hint, and they can't do it by suggestion, and they can't do it by surmise. If there is a keynote in this particular case, and for this purpose I'd like to digress for one minute from my prepared remarks, if there is a keynote in this particular case, I think it was represented by two things that Mr. Wohl said in his final argument or his summation.

He was talking about Mr. Daley going down the mountain, and he'd have you believe that Mr. Daley got up the mountain. How? We will get to that in a minute. He also would have you believe that the only way that Clausi, and you saw Clausi, and more on that subject later, but you saw Mr. Clausi, he would have you believe that Mr. Clausi got the word. He used two expressions twice, and I submit to you that throughout my final arguments they will become apparent they are the theme of the prosecution's case in talking about how Mr. Daley got up the mountain because he couldn't establish it.

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1 2 ewsr

2 He said to you "In some way" Mr. Daley got up the moun-
3 tain. Then, because he can't establish how Clausi might
4 have heard about how much gravel was delivered and how
5 much was needed he said "In some way" Clausi got the
6 word.

7 Well, I submit to you that what they are doing
8 is trying to institute suspicion, suggestion and surmise
9 in place of their obligation of evidence, and those
10 two words, please, keep them rooted in your minds somehow
11 as saying to you "We can't fill it in with proof, but
12 somehow, please, ladies and gentlemen, establish the
13 guilt of Theodore Daley" beyond a reasonable doubt.

14 Now, if you had an opportunity to talk to
15 me you might say to me, "Newman, you use words like
16 reasonable doubt, burden of proof, material elements;
17 what do they mean"?

18 Again, I am not copping out on you. As the
19 commercial on television says, it is not my job. He
20 will tell you at the proper time and if I were to try
21 to tell you he would jump all over me. I am not copping
22 out. They are not Madison Avenue words, they are
23 viable, important, significant concepts upon which the
24 whole system of criminal justice is rooted.

25 With the preliminary remarks out of the way,

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1 3 ewsr

2 want you to do something, I want you to join me as we
3 reason together, as we look at the facts and as we draw
4 the inferences. I am not going to highlight a particular
5 witness for you. I am going to ask your indulgence and
6 ask your patience and ask you to join me as we go through
7 every single witness in this case, whether he was pro-
8 duced by the prosecutor, whether he was produced by the
9 defense, and we listen to what he said and, to use an
10 expression of our friend Mr. Jaffe, I will try to capsule
11 it. If my recollection of what that witness says disagrees
12 with yours, I say to you again sift it out.

13 Let's see what the prosecution produced to
14 meet their burden to establish guilt beyond a reasonable
15 doubt. The first witness they produced is Anthony Alecca,
16 and it may seem like an eternity ago but it was ap-
17 proximately some two weeks ago. He told you, contrary
18 to what Mr. Wohl would have you believe today, he told
19 you that he was president of the union from 1966 to
20 1973. He was a business agent from 1963 to 1973 and
21 hiring lists were maintained in the union, according
22 to Mr. Alecca. He knows Ted Daley since before 1955,
23 that there came a time when Mr. Daley had a camp in
24 windham, an old German style building. He had Daley
25 work on the roof together with other union members.

1 4 ewsr

2 He got a backhoe delivered up there which Mr. Daley told
3 you about didn't work, but Mr. Daley needed a backhoe
4 to dig fence holes.

5 In the summer of 1971 he tells you Mr. Daley
6 needed a small dozer, and he couldn't get it so he spoke
7 to other officers. He got Daley a big dozer later on,
8 and Mr. Daley told you where that dozer came from,
9 that Alecca told him that that dozer came from Alecca's
10 house, and the way he put it was that Mr. Daley said he
11 needed a few loads of stone, one inch. He says he asked
12 for the stone from Turco. Turco said he had to speak
13 to Greene.

14 There came a point later on that Greene
15 okayed it and that Turco released stone. Now, Alecca
16 was very clear when he testified from the stand, and
17 Mr. Wohl would ask you to do certain things. He said
18 to you you will find there are certain places where
19 prosecution witnesses contradicted each other,
20 disregard it, these are only oversights and mistakes they
21 made. There are certain places where the defense wit-
22 nesses perjured themselves. I won't tell you to dis-
23 regard it. You will be the judge of it because you
24 are the ultimate judge of credibility, but you listen
25 to what each of the witnesses testified to as I recollect

1 5 ewsr

2 it and as you recollect it.

3 As I recollect it, Turco said from the witness
4 stand that nobody every mentioned stone, that right up to
5 the time that he came into work on Saturday and saw some
6 of the tickets, he assumed that they were going to pick
7 up screening but Alecca said that he told Turco there
8 was going to be stone. He tells us that after the okay
9 he told Mr. Daley on September 3rd that stone was going
10 to start being delivered that night. He got into the
11 accident, that he called Clausi and asked Clausi to
12 help him out, and that he tells us that he told Mr.
13 Turco that the stone was for Daley, and that goes to a
14 very significant question.

15 You are being asked to say that a man is
16 guilty of extortion, and you are being asked to say
17 whether he is a very powerful figure and was known to
18 everybody and that's why everybody gave in to him, the
19 workers, Hudson Cement; and you think Mr. Greene gives
20 in to people like that?

21 Remember Mr. Green, their witness? He gives in
22 to people like that? More important than all of that is
23 that is a very interesting factor which I think nips
24 right at the outset any concept that everybody did this
25 because they were afraid of Daley and that concept is

6 ewsr

very simple. Mr. Turco told us that he didn't know that any of the material was to be for Daley when he okayed its release unless Clausi came that Friday night and told him it was for Daley.

More important than all of that, the guy who had the final say, and that was Greene, didn't know of Daley's interest in the stone until after the second pick-up on Saturday so he allowed the stone to go out without even knowing Daley existed in connection with it.

Alecca goes on to say he spoke to Clausi about some beams and he had a conversation with a fellow by the name of Doc Marcelle who is supposed to be an important man in Callanan. Marcelle said something which Mr. Alecca acknowledge that has significance in this case and I will point out how significant it is later on.

1 l gwsr

2 Mr. Marcell said, "I want to talk to you
3 because people have a bad habit of using other people's
4 names and I want to make sure that somebody isn't just
5 misusing the name."

6 I asked Mr. Alecca whether that is a tradition
7 up in that area that people say, "Daley wants this" and
8 "Daley wants that."

9 He said, "Yes, that is a practice up there."

10 He told us to his knowledge nothing was paid
11 for and that he spoke to Clausi the day before the stone
12 was delivered. He says that he, Alecca, saw some
13 weight slips in Turco's possession and they weren't
14 turned over to him.

15 Remember what Turco said. Okay?

16 You were asked by Mr. Wohl, and I will digress
17 for a minute, you were asked by Mr. Wohl, Why would Alecca
18 hold onto the money because he would get into trouble
19 with Daley"?

20 That is very interesting, because Alecca
21 would have you believe that he saw weight slips in
22 Turco's hand and he didn't say a word about those weight
23 slips, just let them go on until 1973 and then in 1973
24 you heard Turco.

25 He calls up Turco and says to Turco, "You

1 2 gwsr

2 got those weight slips" They will help me in my fight
3 with Daley."

4 Do you think this is the type of man who would
5 beat the employees? I say yes. If you remember Turco
6 had weight slips and if he gets his hands on them he
7 can hurt Daley, you think about the way that mind works,
8 you think he will be concerned if he gets seven or
9 eight hundred bucks, he will lose sleep about it?

10 When I cross-examined him, I said to him,
11 "That pickup truck after the accident, did you get another
12 pickup truck as a gift?"

13 And he said "No, it wasn't that pickup truck."
14 He said, "It was actually the pickup truck that was in the
15 accident that I got as a Christmas present from the
16 employees."

17 I said, "Did they fit down the chimney"?

18 He was being a wise guy. I confess I was
19 being a wise guy.

20 His answer was, "No." I think he said --
21 and this is my recollection. If it disagrees with
22 yours, turn it out -- it ran over two thousand bucks
23 and there were ten names signed to the card.

24 I said "Was one of the names an employee"?

25 I gave him a specific name, Conti. You heard

1 3 gwsr

2 that name later on. And he said no.

3 Do you think a guy who would take from ten
4 employees, ten guys who were going out to drive trucks,
5 okay, for a living, a Christmas present of a pickup
6 truck of over two grand, would be concerned about beating
7 them cumulatively out of the eight hundred? Think
8 about it. Think about what kind of guy Alecca is.
9 Think if he is capable of pocketing seven hundred bucks.

10 Did I say he intended to steal it? No.

11 I don't have to get into that. I will get into a serious
12 question with you. No, I will do it right now.

13 You saw the power of the FBI. They reached
14 up to Windham. You saw it in this courtroom today.
15 They reached up to Windham on the same Monday Mr. Daley
16 testified about Tompkins and Lawrence, and they went up
17 to Windham -- and I don't know the distance, we traveled
18 over the map several times. I got car sick so I didn't
19 remember the distance. The distance I remember, ladies
20 and gentlemen of the jury, was at least sixty miles
21 from Kingston, if I remember it correctly. I don't know
22 what the distance is from New York to Kingston. I
23 venture 100, 120 miles. That is 180 miles one way.
24 They reached up there yesterday to take these two gentle-
25 men, and I use the word advisedly, Tompkins and Lawrence,

1 4 gwsr

2 and bring them down with subpoenas last night and sub-
3 poenas this morning to testify, and we will get to
4 that. Maybe I ought to thank them for doing it.

5 In any event, that shows the power, the re-
6 source and the ability to obtain witnesses. But one thing
7 stands out like a beacon in a fog in this case. You
8 didn't see Alecca brought back here. You didn't see any
9 of their witnesses brought back here, substantive
10 witnesses, who Mr. Daley contradicted under oath. Did
11 you see Alecca get back up here? Did you see Alecca
12 say "I never got the money"?

13 Sure, Mr. Wohl said I said four hundred in
14 asking him a question. I apologize to you. That was my
15 mistake. Hold it against me and not Ted Daley. I put
16 the fat in the fire. I dropped the issue right off the
17 bat. I asked him that question. Did he come back and say,
18 "No, it never happened"? Did he come back and contra-
19 dict Turco that he asked for the tickets? Did he come
20 back and contradict that woman Engles
21 that he told her he wanted to see Daley in jail? Did he?
22 Think about it and ask yourself why or, better yet, ask
23 yourself why not and ask yourself whether that entitles
24 you to draw the inference that what Mr. Daley said or what
25 we adduced here as evidence was the truth.

1 5 gwsr

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2 That's my recollection of his direct testimony,
3 and you may recall during the opening I asked you to
4 judge a witness as a total picture, what he said on
5 direct, what he said on cross, how he behaved, and I
6 said to you that during the time when the Judge charges
7 you he will give you some legal standards to apply to each
8 witness to determine whether the witness is credible or
9 believable.

10 In addition to that, I ask you to buy two
11 commodities the Judge gives you, and use them when you go
12 back there to decide the case. Those two commodities
13 are your common sense and God given experience. So
14 see how they testified, see whether it makes sense
15 logically, factually, inherently. See how they de-
16 meaned themselves on the stand. Most of all, see if
17 they had a motive, see if they had an axe to grind. See
18 if they were trying to accomplish a result here in
19 front of your eyes. And when you get down to the bottom
20 line, see if anybody was attempting to con you.

21 Now, I asked Mr. Alecca a certain question. I
22 asked him whether work was done at his place, and he
23 said, "It is minimal." He said, "In addition to that,
24 every time somebody did work, my wife made a supper meal."

25 You heard Harry Williams testify here and you

1 6 gwsr

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2 heard Mike Spada tell here and you heard Harry Williams
3 uncontradicted and Mr. Wohl didn't cross-examine him on
4 that subject, that he, during the period he was driving
5 on one particular job, every month he drove 30 to 40
6 loads as did other truck drivers to fill in the back of
7 r. Alecca's house. Well, if Mrs. Alecca made a dinner
8 every time those guys came, she was busier than Mama
9 Leone's, because she had a guaranteed roll of customers.
10 I submit to you that it is an affront to suggest that
11 to you, that during this entire period these people
12 were delivering this stuff, Harry Williams brought a
13 hi-lo from Callanan to smooth it out and Mrs. Alecca
14 is in the kitchen making dinner for all of these people.

15 Does that say something to you about Alecca?
16 Does that say something to you about his capability?
17 Does that suggest to you maybe he could pocket seven hun-
18 dred bucks, eight hundred bucks or 750 bucks?

19 I think that's an incite, and I think, more
20 important than that incite, perhaps, and I use the word
21 conning, although it has no legal significance.

22 You heard Mr. Alecca when I cross-examined
23 him about blacktop. Okay? I said to him, "You had
24 blacktop done at your house"

25 "Oh, yeah."

1
2 On redirect, Mr. Wohl, the efficient pro-
3 secutor that he is, took an envelope from that cart and
4 came out with a check, he showed the check to Mr.
5 Alecca and said, "Is this the check for your blacktop,
6 Mr. Alecca?"

7 Mr. Alecca said yes. And that check is for
8 \$90.40. Okay? And I dropped the issue.

9 But when I had Mr. Kozlowski on the stand,
10 I showed him some pictures and I asked him if those
11 pictures were a fair and accurate reproduction of Mr.
12 Alecca's house and whether he was familiar with Mr.
13 Alecca's house and had he seen it.

14 The answer was yes. The pictures didn't go
15 into evidence for certain technical reasons, but they
16 refreshed Mr. Kozlowski's recollection sufficient to say
17 that the driveway ran approximately 50 to 100 feet in
18 length and there were two of them because there were
19 two garages.

20 Well, Mr. Wohl told you about getting things
21 for nothing. I would like to contract Mr. Alecca for two
22 driveways or all the driveways he can install like that for
23 ninety bucks, because I think I can get rich. And I
24 suggest to you that he had the affront to take a piece
25 of evidence and put it in front of you to suggest to you

8 gwsr

1919

that he paid for this.

Now I know he is not on trial and Mr. Wohl, as capable as he is, you remember when I said he is not on trial. I am not trying him here. Maybe I would like to but I am not. But what I am suggesting to you is that it was a sufficient affront and a sufficient insult to your intelligence for you to consider the kind of man that Alecca is and to consider this when you are weighing his testimony.

Now, you will be told among the rules of evidence that you can consider is that if you find that a witness wilfully lied about a material fact in this case you may disregard all of that witness' testimony, any part of that witness' testimony or the part that you feel is untrue. In other words, you are given that kind of power that if you feel a witness, he or she, lied about a material fact, you may disregard all of that witness' testimony. Keep some of these things in mind when you are considering Mr. Alecca.

Now, I told you that one of the ways they can't prove their case here is by suggestion, hint, guess and surmise. I want to give you an example of it.

Throughout witness after witness for the prosecution they were asked, "Who is the No. 1 man in this

1 9 gwsr

2 union"?

3 They said, "Secretary-treasurer. In other
4 words, the president is No. 2."

5 I want to lay something ut right now. There
6 is no crime in being the head man of anything. Every
7 business organization, every labor union, every organi-
8 zation that is worth its salt has a chief executive offi-
9 cer. No ship runs without a captain, no business runs
10 without a head. So the attempt to suggest to you, "Daley
11 is the chief executive officer" has nothing conspira-
12 torial attached to it.

13 It is suggested to you, "He is the secretary-
14 treasurer and in all our experience the president is the
15 president of the United States and the president is the
16 leader of a corporation. You see, there must be some-
17 thing sinister here." He is the secretary-treasurer
18 and he is running this organization instead of the
19 president."

20 You heard the answer. You heard the answer
21 uncontradicted not only from Mr. Daley but from the
22 other witnesses, even from their witness Alecca.

23 The constitution, the internatioanl consti-
24 tution of that union, established the requirement that
25 there be one executive officer in the union and that the

1 10 gwsr 1921
2 majority of the unions, for their strange reasons, have
3 the secretary-treasurer.

4 That's an example of what I am talking to
5 you about of suggesting that surmise, the suspicion to
6 evidence that Mr. Daley did anything wrong.

7 He tells us on cross-examination that Ted ---
8 he never asked Ted Daley to save the beams for him, and
9 he also tells us he doesn't remember if the dozer comes
10 from the Lizza job 35 miles away. It could have been.
11 This is interesting. He says to me it could have been
12 from the Lizza job but he is not sure. He can recall
13 only one bulldozer.

14 But you remember Harry Williams and the pay-
15 loader? He doesn't recall that. Then he tells you
16 something that is very interesting. He tells us that
17 everything that he got from the quarry was waste, and he
18 started to use an expression "quarry waste", and he used
19 it consistently throughout his testimony.

20 Now, concededly he is the man who undertook
21 to get the material for Mr. Daley, and Mr. Daley told
22 you that he believed that what he was getting was to be
23 waste. Well, think about it for just a minute. What
24 expression did Alecca use throughout his testimony?
25 Oh, sure, Alecca was using it throughout his testimony

11 gwsr

1922

1 to suggest to you that he is holier than holy and all
2 he would take is quarry waste. Okay? Do you think he
3 might have used that expression to Mr. Daley? Do
4 you think Mr. Daley might have been justified in assuming
5 it is waste? Think about it. Think whether it suggests
6 to you corroboration of the idea that Mr. Daley was
7 led to believe by Mr. Alecca and believed right up to
8 the delivery it was waste and, upon seeing it, didn't
9 even change his mind about it.
10

11 He also would have you believe that the only
12 delivery he got from Harry Williams was on a weekend.
13 Do you really believe that? Do you think Williams got
14 up here and perjured himself and said he delivered every
15 single day and do you think if he did that, the Govern-
16 ment, with their facilities, wouldn't bring Mr. Alecca
17 back here -- he is only up in Kingston. He is not
18 nearly as far away as Windham -- to say Harry Williams
19 is not telling the truth? I say you can assume, there-
20 fore, he in fact got the deliveries Harry Williams said
21 he got.

22 He told us Daley never gave him the four
23 hundred. One of the criterias you will be told about,
24 as I already told you, in analyzing any witness is the
25 motive. What axe did she or he have to testify? Please

12 gwsr

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2 remember this when you are evaluating Mr. Alecca. He
3 told us he had a heart attack and he was kept on the
4 payroll by a motion by Mr. Daley for a period. His
5 family was well treated. Then he heard a rumor that he
6 heard a rumor that he was going to be asked to retire
7 and step down from the union, and at that point he started
8 to get angry at Mr. Daley. Then there comes a time
9 in April, 1973 -- this is after March of '73 when he
10 heard the rumors that Daley was going to replace him --
11 and he very casually tells Mr. Wohl on direct examina-
12 tion, he says, "Mr. Wohl" -- although he doesn't call him
13 Mr. Wohl -- "oh, I drove down to the FBI in April of
14 '73 with somebody."

15 And I got up on cross-examination and said,
16 "Okay, \$64 question. Who is the somebody?"

17 He looks to Judge Lasker and says, "Do I
18 have to answer?"

19 Judge Lasker to my recollection says, "Yes,
20 you do."

21 He says, "Anthony Naccarato."

22 We know who Anthony Niccarato is and we will
23 get to him later on. He drives to the FBI with Anthony
24 Naccarato and he makes it sound very casual. Then I
25 asked him on cross examination, "Did you go once?"

1 13 gwsr

2 "Absolutely only once in April of '73."

3 That is to show that he is going as a public
4 spirited citizen.

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6 [Continued on next page.]
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gwb-1

Just once. Then lo and behold we take out a whole series of reports which we marked for identification and the dates I remember showing him now, although he originally said once in April, April 3, established the following: April 11, June 1, June 11, June 13, June 18.

When confronted with all of this, what does he say? He remembers the substance of the conversation but he only thought it happened on one occasion.

Ladies and gentlemen, do you really believe that you would mistake six visits over a three-month period to the FBI for one visit in one month? You say what is the significance of that, Mr. Newman? The significance of it is, I suggest to you, that Mr. Alecca decided in March to get Mr. Daley, and I suggest to you that that colored his entire testimony and that you should view it and that you don't just casually go to the FBI for a ride and got there six times unless you are looking to achieve a purpose.

Now, it is very interesting there wasn't an FBI agent brought into this courtroom tosay, "We called Mr. Alecca, we told him to come down."

You might say, suddenly Mr. Alecca got struck with inspiration, as Mr. Wohl would have you believe, he

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1 gwb-2

2 decided to squeal. Really? That is his purpose? But
3 he suddenly tells me on cross-examination that after he
4 would go to the FBI he met with Mr. Daley's opposition
5 to relay the information to them.

6 That is how a public-spirited citizen operates?
7 If you know of a crime and you are interested in appre-
8 hending a criminal and you are a public-spirited citizen,
9 after you report it to the police you go around and advertise
10 it to all your neighbors and, coincidentally, all of the
11 people who dislike Mr. Daley?

12 Now, that is interesting. Mr. Wohl said if he
13 pocketed the money he would get into trouble with Daley.

14 It seemed in April he didn't care about getting
15 into trouble with Daley. He went around and trumpeted
16 that he was going around to the FBI on at least six
17 occasions. Did anything happen to him? No, he was
18 allowed to retire, he was allowed to draw his pension
19 and he stepped out of the union in August, and the reason
20 he stepped out of the union and the reason that his
21 testimony may be colored is, lo and behold, Mr. Daley caught
22 him. And how did Mr. Daley catch him? He was drawing,
23 Mr. Alecca was, his salary from the union and, in addition
24 to that, unbeknownst to everybody, he was drawing his
25 Social Security disability money, and Mr. Daley wrote a

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1 gwb-3

2 letter, and you heard the letter here, and the letter
3 said, "We can get ourselves into difficulty. He can't
4 do this. We must put him on retirement."

5 Do you think that would color M. Alec's
6 testimony? Do you think that shows an insight into
7 a man who is beating Social Security, beating the union
8 at the same time and pocketing the money?

9 Do you think he might pocket or go south,
10 as the expression goes, with seven or eight hundred dollars?
11 You think about that.

12 He would have you believe in his testimony,
13 as I pointed out to you before, that the reason all
14 of this stone or material was delivered was because the
15 name Daley was used, but you found out for yourselves
16 that the name in that area was Alecca.

17 Now, he told you on direct examination that
18 the material there was stone, and then he looked at some
19 pictures for me and I said, "This look like stone?"

20 He said, "Yes, that looks like stone."

21 Because that is the pile, I submit to you, from
22 which he was working. Then he suddenly realized he is
23 getting boxed into a corner. So what does he say?

24 He said, "That looks like crushed stone."

25 Then he looks at it again. He says, "It looks

1 gwb-4

2 fine."

3 He said, "It looks small, like powdery."

4 This about that. Think about whether he was
5 trying to accomplish a result here when he was in this
6 courtroom and knew it wouldn't help the prosecution if
7 in turn it turned out it was screenings to say it was stone.
8 When you are confronted with material, ease off it. How
9 do you ease off it? You say it's stone. Then when
10 pushed, you say crushed stone. Then when you are pushed
11 a little further you say fine stone.

12 You know what it was. He didn't want to bite
13 the bullet. He didn't want to acknowledge what it really
14 was.

15 And in that same area, Mr. Wohl made much of
16 the idea, do you believe that Mr. Daley didn't know where
17 this stuff came from?

18 I suggest to you that you viewed Mr. Alecca and
19 I suggest to you that you can infer that his type of ego
20 requires that he be the big guy on the block and that he
21 would say to Mr. Daley, "I can get you the stuff. Don't
22 worry about where I can get you the stuff."

23 And he wouldn't tell Mr. Daley where he would
24 get the stuff. I suggest you view the total person, view
25 the total being, view how he comported himself here.

gwb-5

While I am on that subject, it is interesting,
he comes back in this courtroom and he says, "I told Daley."

So then I push him on cross-examination.

"When did you tell Daley?"

"I don't know. I don't remember. I really
don't know when I told him."

Mr. Wohl said, "Before the stone delivery?"

His answer is "Oh, sure."

he doesn't remember when, twice. But he isn't
stupid. He realizes Mr. Daley, to make the cheese more
binding against him, to make the prosecution more binding,
it shouldn't be after. Who is going to expect him to go
around scooping it up, putting it back into the trucks
and taking it back? So obviously let him know. But
twice he never knew. But one thing was in his mind: What
could damage Daley? Before.

"When before?"

"Don't know."

"How long ago?"

"Don't know."

"On what occasion?"

"I don't know."

And use the facts in this case. He tries to
get the stone, he tells us, from Hudson Cement. He doesn't

1 gwb-6

2 know about it until Friday. He then tells Daley the stone
3 is going to be delivered.

4 During that part of the conversation, did
5 you hear him say a word the stone is going to come from
6 Hudson Cement? Not a word. When is he going to tell
7 Daley? The next day he is hurt in an automobile accident.
8 He didn't call Daley from the Thruway. He calls Clausi
9 or his wife went over to see Clausi. The only way Daley
10 knew about is is a girl in the office told him Alecca was
11 hurt in the accident.

12 When was it he would have told? I guess the
13 time comes again to apply Mr. Wohl's expression:

14 "Somehow Daley found it out. We can't tell
15 you, we can't show you, we can't prove it but somehow, trust
16 us, he found out."

17 And an interesting insight into him is I asked
18 him on the first day he was on the witness stand on cross-
19 examination, and I didn't look at your faces when I asked
20 the question -- I don't know if some of you thought I was
21 off the wall -- I said to him, "Were you made at Mr. Daley?"

22 I guess if I were in your position I would say,
23 "What is he talking about?"

24 He said, "Yes." :

25 Do you think that is an insight into the man?

1930

1 gwb-7

2 Think about that for a minute.

3 Then I said to him, "Were you made, did you
4 ever tell anybody you were made because of where Mr.Daley
5 had you sit, or put you down, at"the man of the year
6 dinner?"

7 "No, I wasn't because I didn't think he had
8 anything to do with it."

9 That is an interesting expression. It means,
10 "That is something I was mad about but I didn't blame it on
11 Mr.Daley."

12 Then he said, "I did tell people I was made
13 at Mr.Daley."

14 That is the kind of person you are dealing
15 with. When Mr.Wohl would have you believe he wouldn't
16 take a seven or eight hundred dollars, you are dealing
17 with an extremely petty person. Not because I am telling
18 you he is petty. I could stand here and call him names
19 and Mr.Wohl can. I say you saw examples of in the court-
20 room. Don't put past him these acts Mr. Wohl is telling
21 you to overlook by logic.

22 It might be suggested to you by Mr. Wohl: Do
23 you really think anybody would color their testimony in
24 a courtroom because of those slights?

25 Well, I know you won't be taken in like that.

1 gwb-8

2 How many people do you know in your own ex-
3 perience who would be so significantly slighted by that as to
4 go around talking about that as to where they sat at a
5 wedding, where they sat at a dinner? And when you are
6 viewing him, remember six visits to the FBI, remember the
7 coverup as to why he went to the FBI. Remember the way
8 he looked at Judge Lasker about not wanting to tell you.
9 Remember, most importantly of all, the \$90.40 for the
10 black top.

11 Do you think that kind of person would hold
12 a grudge sufficiently to come in here and try to sink
13 somebody? And if you don't really believe those are suf-
14 ficient, remember what Mr. Turco said, and I don't want to
15 sound like a broken record. He said Alecca called him and
16 said, "Hey, in 1973, do you have those weight tickets? They
17 will help me against Daley."

18 Do you think that kind of man could come in and
19 color his testimony? How many of you would remember that
20 for two years if you weren't really anxious to get somebody
21 and could taste their blood?

22 So much for Mr. Alecca.

23 You have to ask yourselves is this the type of
24 testimony which you can say beyond a reasonable doubt
25 convicts anybody of anything.

1 gwb-9

2 The next witness was our friend Mr. Clausi.
3 He said he was a shop steward on the Callanan job;
4 he was called by Alecca and told to get drivers; he
5 called Kozlowski and Spada and told him to load up; he went
6 to Hudson Cement, Number 1 stone, and at Spada's garage
7 I think he told us that Mrs. Alecca came down and told
8 him where it was going.

9 Then we had a very serious -- well, a very
10 interesting insight into Mr. Clausi. Mr. Clausi three times
11 was asked by Mr. Wohl, and I am not going to burden you
12 with reading testimony, but if you want it read back at
13 any time, that is within the option of Judge Lasker when he
14 thinks it is appropriate, and you have the power to get it
15 read back. He will tell you about it.

16 On pages 200, 202, 207 and 208 of the trial
17 transcript, he was asked:

18 "Did Alecca tell you who the stone was for?"

19 And his answer on all four of those pages was:

20 "No, he did not."

21 You say, "Okay, big deal, he said it. What is
22 the significance?"

23 The significance is that it helps, along with
24 everything else in this case, to destroy the illusion that
25 the big name here is Daley. And he went on to testify

1933

1 gwb-10

2 specifically that the first time he found out was when
3 Mrs. Alecca came to the garage and told him that it was
4 going up to Windham to Daley's place.

5 Now, that is interesting because up to that
6 point he had gotten every driver, he had gotten every
7 truck owner and if he didn't know about the Daley name,
8 then none of them knew about the Daley name at that point.

9 An interesting thing happened. He goes out to
10 lunch -- and, by the way, there were additional pages I
11 overlooked, 205 and 206 of the record have him doing the
12 same thing -- he goes out to lunch and he comes back after
13 lunch and he says, "Oh, yes, now I remember. I remember
14 that I knew about the Daley name when Alecca called."

15 How does he remember? The word "guide" was
16 used and it triggered off "somebody was going to guide me.
17 I didn't know how to get to Windham."

18 I confess to you I am taking words out of
19 context, but I suggest to you you read his testimony and it
20 doesn't cut the mustard. He says he went out to lunch,
21 and I didn't ask him who he went to lunch with. He went
22 out to lunch and came back with an explanation, a Clausi
23 explanation, that he got by talking to certain powers. How
24 do you get it after you said on eight pages you didn't
25 know Daley's name was mentioned? It is triggered to you.

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1 gwb-11

2 What you do is get gibberish for an answer. You
3 have the power to have it read back to you.

4 Mr.Wohl made a lot of the early morning
5 phone calls, and I don't dispute with my friend Mr.Wohl,
6 but I believe that Clausi said -- the phone call was made to
7 him by Daley five o'clock in the morning. That is
8 what I recollect the testimony to be. You cross-examine,
9 you say to me, "What is the significance of that?"

10 The significance of it is that I think it ex-
11 hibits something about Clausi. Ask yourselves something.
12 He says that Daley called him and said, "You get X number
13 of loads delivered up to Windham the next day."

14 Really. Clause sees Daley on the way down,
15 down at the foot of the mountain, has a conversation with
16 him. He says trucks are on the way. Clausi testifies
17 Daley drives back in the direction of Kingston. Kozlowski,
18 although Daley doesn't remember it, but didn't deny it,
19 Kozlowski says he met Daley even further down. Daley
20 had a conversation with him and then drove in the direction
21 of Hunter, New York.

22 I asked where is that going back to. Kozlowski
23 says going back to Kingston. Then I asked Mr. Kozlowski --
24 and you might say what is the significance -- "Did you
25 ever see ~~Daley~~ Daley come back? Did you ever see him up at

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1 gwb-12

2 Windham that night?"

3 His answer is no.

4 I said, "You know Daley's car. Did you see it on
5 the highway coming up?"

6 His answer is no.

7 Now we have an interesting logical fact?
8 How in heaven's name was Mr. Daley going home at eight
9 o'clock, the trucks being unloaded, nobody seeing him
10 drive back, how would he know to call Clausi, particularly
11 at five o'clock in the morning and say to him, "You get X
12 loads?"

13 He doesn't know how many loads came up there.
14 For all he knows it was sufficient loads to cover the place.
15 He wasn't there that night.

16 Mr. Wohl, an astute lawyer that he is, what is
17 his answer to that? Somehow Daley found out. And what
18 does he do? He confronts Daley and he says to Mr. Daley,
19 isn't it a fact that you drove up there that night?"

20 Mr. Daley says, "No, that is not a fact."

21 Then he comes back and says, "Why didn't Daley
22 bring us an alibi witness that he was really at home?"

23 You want me to bring Mrs. Daley in and have
24 her stay behind Mr. Daley, "He was at home."

25 Let me put the shoe on the other foot. Did

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1 gwb-13

2 Mr. Wohl bring in any factual piece of evidence to sub-
3 stitute for it somehow? Both his witnesses make it
4 logically impossible for Mr.Daley to have been up there
5 that night and made that phone call at five o'clock in the
6 morning, because he wouldn't know how much material was
7 there. You may say to me, "What is the big deal about
8 all of that?"

9 I will tell you what the big deal is. I
10 think, most respectfully, ladies and gentlemen, it gives
11 y o an insight into Clausi. I think most respectfully
12 he is capable, and I suggest it to you just from that
13 incident, of making things up and making things up to make
14 it sound significant. You might say to yourself,
15 and he in his mind might say to himself, "If I say five
16 o'clock in the morning, that is going to make the cheese
17 binding because that is an outstanding time. I might not
18 remember a call at eight, at ten, because those are normal.
19 If I say five in the morning, it has to stick out in my
20 mind. It has to impress these ladies and gentlemen.
21 "Here I came back from working for Mr.Daley two in the
22 morning, and he, Mr.Daley, gets me up five o'clock in the
23 morning."

24 Think about that and think about Mr. Clausi
25 and think if he is capable of doing it.

1 gwb-14

2 Then he tells us about conversations he had with
3 Mr. Turco. Of course he tells us, Mr. Clausi does, about
4 driving up. the unloading, the various trips and on Satur-
5 day that he sees Mr. Daley up there working on a bulldozer
6 and it gives us another interesting insight.

7 See whether that shows a motive here.

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9
10 (continued on next page.)
11

12 End 7B PM

Tk 8A PM

ewb-1

1
2 He says that Mr.Daley did bring out six
3 packs of beer, but he says they were very small beers.
4 "Usual thing, they were seven ounce beers."

5 You are really going to remember what size beer
6 you got in 1971 in 1977? Does that give you an insight
7 into a person? Does that tell you something about him?
8 Does that suggest to him that maybe he has an axe to
9 grind?

10 Then he shows us something else. Do you remember
11 he said something which seemed very insignificant, and do
12 you remember how he sat there, he said, "I am just here
13 to tell the truth." What else did he do?

14 "When I spoke to Turco and said how much stuff
15 are you taking, he, Turco, said to me you guys are getting
16 worse than Alecca and Daley."

17 Really? You heard Turco here. You heard
18 what Turco said about that conversation. The only name
19 Turco mentioned in that conversation was the only person
20 he knew ever taking stuff from Hudson Cement, Alecca.
21 He said to you, Mr.Yurco did, that Daley never asked him
22 for anything, that his only contact with Daley was once
23 in a Howard Johnson's when he was introduced to him in
24 the presence of other people.

25 Do you think that Turco used the name Daley,

ewb-2

or do you think that Mr. Clausi threw the name Daley in. You be the judge of that. It is both of their witnesses, and I know what was suggested to you in Mr. Wohl's argument. "You see, when our witnesses contradict each other it is really not significant, it is time of day, it is hour. When their witnesses say anything different they are perjurious."

That is an ultimate decision that you will make. You can accept whoever you want. You can reject whoever you want, but just remember this little insight into Mr. Clausi and remember who contradicts him, not one of my witnesses, not somebody who has an axe to grind in the union, but Mr. Turco, one of their witnesses.

He also tells us or would have you believe that during the same conversation at five in the morning Mr. Daley said to him, "How many loads would it take," and Clausi says seven or eight, and he says, "You go get it," He says to us Daley tells him that Captain

Hetcher owns the property up there. You know what is up there, a sign, Captain Fletcher. Do you think that if that ever occurred, that it wasn't a question of one guy kidding another, but he remembers it as Hetcher, not Fletcher? Do you think he dropped that little bomb to suggest something to you? Do you see Daley is hiding the

1 ewb-3

2 property? And I will get to that later on. I know you
3 are not happy when I say the words "later on", but we
4 have witnesses to go through. Particularly, isn't it
5 interesting, if Daley -- and he really believed that Daley
6 didn't really own the property -- wouldn't it have been
7 interesting if, when he met Daley, he said to Daley, or
8 on the telephone, "Hey, why did you tell me that somebody
9 else owns the property, it is your property," or some
10 conversation about that. No, he accepts it as carte blanche
11 and he just drops it.

12 There was a sign up there that said "Captain
13 Fletcher." Daley didn't deny it, and he told you the
14 purpose of it. Do you think anybody didn't know whose
15 place that was? Who drove you up there? Then we get
16 into an area where he tells you, and I think this gives an
17 insight into him, he tells you that a couple of men refused
18 to drive. Who refused to drive? Eaton, Brennan.
19 They didn't have to worry, Clausi is no f--- he is no
20 squealer, he wouldn't tell anybody. Do you really believe
21 he wouldn't tell anybody? I think his knowing it is like
22 buying time on NBC, and I suggest that to you as an infer-
23 ence you can draw after seeing him perform here.

24 He wouldn't tell anybody, except he walked
25 around discussing with everybody the fact that he was

ewb-4

angry because Leland Eaton, who refused, was getting more work than him. Who did he discuss that with, his wife and kids, or did he discuss it with other union members.

I suggest to you you might be able to infer that, "Look, if I say that I told Daley and these guys weren't fired and they worked more than me," this knocks the props out of the prosecution's argument that Daley is a big power here and that he levels a hand of revenge on anybody that doesn't do what he wants them to do.

At first he says he went up there as a friend, and then he makes that grand gesture, and what is the grand gesture? He turns to Mr. Wohl and Mr. Wohl says to him, "Are there any other reasons in your mind, Mr. Clausi?"

He says, "You seem to forget, I have a wife and three kids." That is to show you that somehow he is in fear.

Do you really believe that? Do you really believe that that was the important concept? You really believe that that is the reason he drove up? I suggest to you that in any situation like this his ego requires that he become the big man, that he take charge, and I will show you a perfect example of it later on in what seemed, during the trial, to be a very trivial fact. He tells us

ewb-5

1 ewb-5
2 or he tells Mr.Wohl, "I have a wife and three kids, and
3 that's why I did all of this." It's interesting
4 he has a confrontation he tells us about with Mr.Daley
5 in the Walnut Grove in 1973, and you remember
6 how enraged he got. He said Mr.Daley said, "Under the
7 powers vested in me you are fired."

8 Then you heard that he was told to go back to
9 the Thale job the following Monday and start working
10 and that he didn't show up. He is concerned about his wife
11 and three kids? There was a job offered to him. Right
12 after that you heard the Kozlowski tape in 1973; what is
13 Clausi doing? He is running a bar and grill. I am
14 saying to you that he was never motivated to drive up to
15 any place by virtue of anything other than his own ego. That
16 required him to be the big guy on the block, and I am saying
17 to you that this was an afterthought on his part when he
18 was angry at Daley for getting fired as a shop steward.

19 He told us about some logs. he spoke to Kozlowski
20 who told him to talk to Hahn. There is another interesting
21 insight, he tells Hahn who says he will get it at
22 Maggiola's yard. What does he tell us that may be very
23 interesting? He tells us that Alecca starts bothering
24 him on the phone, "Where are those logs for Daley?"

25 "Where are those logs for Daley?"

ewb-6

1 Daley knew enough to call them at five o'clock
2 in the morning. If Daley really wanted those logs, why
3 does Alecca call? Why doesn't Daley call? Doesn't that
4 suggest to you that there is some semblance of truth to
5 Mr.Daley's testimony that when he got the first shipment
6 and he spoke to both Alecca and Clausi, I told him, "Hey ,
7 I can't use this," that Alecca told him, "Hold onto them
8 for me." This is after the first shipment. Now there
9 is a second one coming. Why is Alecca so interested in
10 that second shipment of logs? Does it suggest to you
11 that he wanted that second shipment of logs? This about
12 it? Does it add up?

13 Also, he would have you believe that one load
14 is already delivered for Maggiola, so why all the big
15 excitement when allthat was spoken to him about was one load
16 of logs.

17 He also tells us in his opinion that Kozlowski
18 is the biggest liar around, that he, Kozlowski, took
19 things from jobs that he did not use, and that the reaon
20 he, -- and remember who discriminates against Kozlowski
21 and remember what we produced to show this to you -- not
22 anybody's notes but we produced a tape recording of the
23 actual conversation in which Kozlowski, in talking about
24 his friend Clausi, says he is the man who saw that
25

ewb-7

1943

1 ewb-7
2 Clausi saw to it that Kozlowski didn't get any work,
3 that it was Kozlowski who believed at that time that
4 Clausi was the man who discriminated against and not the
5 union in general, as he would have you believe here.

6 He also told you about the stone, how it had a lot
7 of sand in it, how he didn't think it was worth anything.

8 He also tried to stick in that he is the most
9 honored man in this town, that he worked in the New York
10 Senate. When I suggested to him, "All right, you called
11 the Mayor in East Kingston," you saw hoe he jumped, "Yes,
12 I am the most honored man in the town."

13 He told you about the stone. He told you how
14 it was filled with dirt. He told you about how the dirt
15 came up, and until you got very close to it you couldn't
16 see what it was.

17 Think of that in conjunction with Mr. Daley's
18 testimony. You didn't hear Mr. Wohl comment on that as
19 to whether Mr. Daley was entitled to believe it was waste.

20 I took him through that deposition. I won't
21 burden you with all of it, but suffice it to say that was
22 a deposition he appeared willingly to. He appeared with
23 his friend Mike Spada. He talked about the beams. He
24 talked about them being beaten up. He talked about them
25 having nicks and marks in them and not being worth anything.

ewb-8

1944

He talked about them being the same beams cut up for blocks under Spada's trucks. Did you hear Mr. Wohl tell you that was one of his own witnesses that acknowledged that? He says to you that John Callanan told him, when he got permission to get the beam, that they are not worth taking any place, they are all beat up.

He also told you that no pressure was put on him by either Daley or Alecca, that he never threatened anybody, that neither of them told him to threaten anybody . Nobody told him to give any special favors to anybody who went to work to drive stuff up to Windham and to penalize anybody who didn't.

What would Mr. Wohl have you believe, where he says he didn't threaten and the witnesses say he did threaten, overlook it, it is just an inconsistency?

It is the guts of the case. Either the people were threatened or they weren't. Overlook it? When they are chief witnesses, "He didn't threaten anybody." Three of their other witnesses got up and said, "He threatened me," That's an inconsistency?

I think that is a mastery of English understatement, that is what that is, if that is an inconsistency. When you are thinking about Daley's power, the "somehow power", can you really believe that in a union of 8000 men

1945

ewb-9

1 Mr.Daley would know every one of them and know who
2 wouldn't drive for him, who would drive for him, and he
3 would have a problem, if he is so powerful with 8000 men,
4 to get replacement drivers, that he would have to imply
5 that he would threaten everybody? Do you mean to say
6 there weren't 25 friends of a union leader who represented
7 a union for over 21 years, that the only reason out of
8 8000 men that 25 guys would drive a truck is because they
9 were terrified of him?

11 Well, he has got to be a magician. You have
12 got to assume that even if 10 per cent of the people voted,
13 800 people voted, and he got a majority, he had at least
14 451 supporters. Out of four hundred and -- or 401 supporters
15 Out of 401 supporters, do you think he might not have
16 25 friends who would drive a truck for him? Just think
17 about that. Do you think he really has to have implicit
18 implied fear? Do you think that is what really motivated
19 everybody?

20 How about the fellows who refused, Eaton,
21 Yonta, Brennan and Sutton. Did anything happen to any
22 of them? Think about that.

23 Mr.Wohl says, "Well, we are not trying to prove
24 that anything happened to them," except that is real.
25 There you don't have to say "somehow", you have the proof

ewbQ10

in front of you, four people declined to go, nothing happened to them. I will establish that here, not somehow, but I will establish that to you from their own records taken from their own possession with Mr. Sutton, Mr. Eaton and Mr. Brennan working right through to the end of the Callanan job, black and white, in this book, and you are free to look at it.

I am going to make you happy. I have some more material on Clausi, I am going to skip right through it. What I am going to ask you to do is analyze him based on what he said, how he said it, his motive in testifying and his appearance here and see if what he says has any logic to it. Say to yourselves, is this the kind of testimony based upon which we can say beyond a reasonable doubt that anybody is guilty of a serious crime?

The next witness was Bockelmann, about whom Mr. Wohl made much ado. We find out he is the brother-in-law of Kozlowski, and he says that he went up because he knew that otherwise in the future he may not get a job, except there is an interesting thing here. Who called him to go up? Who called him? According to Mr. Wohl, there is a chain of command here like in a military, from Daley to Alecca to Clausi. There may also be a double play combination.

1 ewb-11

2 Interestingly enough, Mr. Bockelmann says from
3 the witness stand, "I don't remember who called me."

4 Now, Mr. Wohl said to you about the great sig-
5 nificance of grand jury testimony. I confronted Mr.
6 Bockelmann, their witness, with Mr. Jaffe in the grand
7 jury. I wasn't putting the questions to Mr. Bockelmann
8 in the grand jury, I wasn't invited. Mr. Jaffe was there,
9 the prosecutor. He says to Mr. Bockelmann, "Who called
10 you?"

11 "Mr. Kozlowski." That is his brother-in-law.

12 At this point, he, Bockelmann, says he didn't
13 know where he was going and for who, and he drove, he
14 drove to Hudson Cement when his brother-in-law Kozlowski
15 called him.

16 What was running through his mind then? Oh,
17 maybe that he knew that he can get a shot or a beer chaser
18 on the arm for driving there, maybe, as Clausi said.

19 He said it was whiskey, Bockelmann said it was
20 beer, and then we put it together, we got a whiskey and
21 a beer chaser.

22 Be that as it may, was it really anybody in
23 this power of command who called Bockelmann?

24
25 (continued on next page.)

End 8A PM

A - 336
1948

1 ewsr

2 No, according to Bockelmann it was Kozlowski in the
3 Grand Jury with this prosecutor. I think it bears out
4 to some degree what I told you in my opening that the
5 people in this area are doing favors for each other,
6 without any fear, without any compulsion, without any
7 arm twisting, without somehow having this esoteric
8 concept of fear of economic reprisal. They were doing
9 it. Kozlowski calls his brother-in-law, "Take a truck to
10 Hudson Cement", boom, his brother-in-law goes to Hudson
11 cement. I think it also knocks the proposition of any
12 argument that Daley is the all powerful man that makes
13 everybody go. Also Bockelmann is an interesting incite.
14 He says to you from the witness stand -- Mr. Wohl asks
15 him "What did you see"? He was supposed to say he saw
16 trucks. He said, "I saw a nice place." Do you really
17 think at night on the top of that mountain he looked
18 around to see that it was a nice place, or do you think
19 it was a little zinger as they say in the vernacular?

20 More important than all of that, when he is
21 asked by Mr. Wohl, "Why did you go up there," listen
22 to what he says, "I thought no more work for me
23 someplace." No more work for me someplace?

24 First of all, what does it mean? More important
25 than all that, if it weren't so serious it would be

1949

2 ewsr

1
2 laughable because you are being aske by the prosecution
3 in a serious case to take that "Somehow" as a suggestion
4 of economic threat. Think about that for awhile.

5 You are thinking, you are being asked to
6 take that as a basis for extortion. That is what this
7 case is all about? I think those remarks, as we go
8 through the witnesses, typify what these people were
9 thinking, that they made it up at their convenience when
10 they decided they are going against Daley.

11 This is the same Bockelmann who didn't remember
12 before the Grand Jury whether he drove up on a Friday
13 night; told the Grand Jury Kozlowski called him, and
14 when I asked him about all of this he said, "Look, I
15 can't remember what happened six years ago," but he
16 remembered that economic threat, and you think about
17 that economic threat.

18 He also told us something interesting that
19 he, as an owner-driver, could go any place he wanted
20 to work and that Kozlowski could hire him if he wanted
21 to, that he didn't have to go to the union. Apply that to
22 some of the things that Mr. Wohl said. Then he
23 indicates in the last minute his true colors.

24 I said to him, "Did you ever call Daley for
25 a job?" The answer was no, but he didn't give me any

1 3 ewsr

2 jobs. "Did Mr. Daley ever refuse jobs?"

3 "No."

4 Do you think that shows some kind of malice?

5 Then he says, when I asked him, "Did you
6 ever discuss the political situation with Mr. Kozlowski",
7 no, only that Kozlowski was being discriminated
8 against.

9 Well, they are brother-in-laws, they are both
10 in the same industry, they have a gripe, they are
11 together, what do you think they would be talking about?
12 International economic conditions, to deflate the pound
13 in England, whether Red China should go off the gold
14 standard? What do you think they'd be talking about?

15 I say to you they would be talking about the
16 bread and butter issue. "It is that Ted DAley, we've
17 got to get rid of that Ted Daley. We are not working."
18 You think about that.

19 I said to him, "Did you ever discuss this
20 case and your testimony and Mr. Kozlwoski's testimony"?

21 "No, absolutely not, never discussed it at
22 all."

23 Lo and behold Mr. Handal gets up on redirect
24 examination and says to him, "Did you talk to Mr.
25 Kozlowski about the subpoena served upon you by the

1951

1 4 ewsr

2 defense lawyer"?

3 "Yes, we discussed that subpoena."

4 Kozlowski went to him for a legal opinion on
5 the subpoena? Is that what we are being told, or does
6 it suggest to you that these two fellows were in
7 contact, were talking, and were talking about this very
8 case and were talking about their testimony and
9 talking about their strategy and talking about the result
10 they decided to achieve in this very case. There is
11 on witness in this case that I am truly sorry for,
12 and we come to him next -- I know it is late, nobody is
13 more aware of it than I am, and I just ask your indulgence --
14 that's Joseph Forte. He was a 19 year old kid in 1971.
15 I think it was Judge Lasker who asked him how old he
16 was after he finished his direct testimony and before
17 I started my cross.

18 You say why do you feel sorry for Joseph Forte?
19 Because I think he was just brought in here, not by Mr.
20 Wohl, no, brought in by his relationship with the
21 Kozlowskis this kid was. What does he testify to, that
22 he drove up, and he drove up, he tells us, that he
23 didn't find out it was Daley's place until he got up
24 there. He didn't see Daley there on any occasion. He
25 didn't belong to the union at the time and he tells us

1 5 ewsr

2 that he was told by Clausi "If you don't go, don't
3 bother to come to work on Monday," or something along
4 those lines. That's what Forte would have you believe.

5 I then asked him on cross-examination "When
6 did this happen, what day?

7 "I don't know when it would have happened."

8 Then Mr. Wohl says to him, or Mr. Handal,
9 whoever was asking him any questions, "What do you
10 think would have happened, I didn't want to find out."
11 That's the same hint or same suggestion. Mr. Wohl told
12 you about that, not Daley.

13 On direct examination who does he say asked
14 him to go up? He doesn't say Clausi, he says Kozlowski.
15 I now say to him on corss, When is it that Clausi said
16 this to you?"

17 He couldn't remember.

18 I then read his grand jury testimony to him.
19 He couldn't remember what was in his grand jury testimony.

20 I read the grand jury testimony where he was being
21 asked by Mr. Jaffe, "Why did you go up"? He said when
22 he heard other guys going he went later. Later he
23 heard rumors as to why he went up or something to that
24 effect.

25 If you remember, I read it very rapidly and

1953

1 6 ewsr

2 Judge Lasker admonished me why did I read it so rapidly?
3 My recollection was Jo Jaffe talks rapidly, and I wanted
4 to simulate the actual conditions. That's the situation.

5 I read that testimony to him. He didn't
6 remember it. He didn't say a word about Clausi threaten-
7 ing him.

8 Then we went through -- and I won't belabor
9 it with you, and that's why I feel badly for him. I
10 went through with him "What date did Clausi tell you;
11 did you see Clausi on Friday?

12 "No".

13 "Did Clausi ever call you?

14 "No, Clausi never called me."

15 I suggest to you that his testimony in that
16 grand jury is indicative of what really happened. He
17 heard a bunch of guys were going, he was 19 years old,
18 he wasn't in the union. These were his comrades and
19 he went with them, period, end of story, but somebody
20 now brings him in and suggests to him "Show fear" and
21 he gives you "I didn't want to find out what happened."
22 Did I think this kid had a motive? No, I don't think
23 this kid had a motive

24 I said to you again I had him on the witness
25 stand and I feel sorry for him. I think his true

1954

1 7 ewsr

2 testimony was in his grand jury testimony when I wasn't
3 there. I think if you listen to the factual presentation
4 as to when he could have seen Clausi, when Clausi could
5 have said this to him, as much as I hate to justify it,
6 I respectfully suggest that Clausi never said anything
7 to him, and that it was Kozlowski, he told us on direct
8 and in his grand jury testimony, that told him to go
9 in. Turco, the operating supervisor, he told us
10 that it was Alecca who called him. I already indicated
11 to you that he never spoke to Daley, Daley never asked
12 him anything about anything. He was under the impression
13 that the material was screening, that the first day
14 that they loaded up he wasn't there, and interestingly
15 enough both he and Greene, what do they tell us?

16 They tell us that both piles, both the
17 screening and the 3/8 stone are right next to each other.
18 Do you remember what Clausi made a big deal about?
19 He said they are a thousand feet apart. You say "What's
20 the big deal about that?"

21 I will tell you what I think the big deal is
22 about that. I am suggesting to you that Mr. Clausi came
23 in. It was to be supervised, it was to be screenings,
24 it was to be waste material and there was nobody
25 around Mr. Big Shot Clausi suggested to the loader,

1955

1 8 ewsr

2 "Throw in a little bit of each." He realized it, all
3 right, but the way to get out of that is by taking
4 the stone. Why would Turco agree and tell us they were
5 right next to each other?

6 I think even Kozlowski told us they were
7 right next to each other. Why? He told us that the
8 pains in the necks that he was concerned about were --
9 Mr. Wohl pressing him as to why you gave this material,
10 he said he didn't want the pains in the neck, Tommy
11 and Tony, no Daley, "They just drive you crazy."

12 Mr. Wohl kept pressing him. "What do
13 you mean"?

14 "They make phone calls, they are nuisances."

15 Was that really economic fear? Did you hear
16 that man, after he was pushed by Mr. Wohl, say a word
17 about economic fear?

18 Then he was finally backed in a corner with the
19 word "grievances," and that's surmise, suspicion, sug-
20 gestion and hint in lieu of evidence. He told you
21 why he destroyed those tickets after Mr. Alecca called
22 him and said he needed the tickets to go against Mr.
23 Daley.

24 Was it Mr. Daley who asked him? He never
25 spoke to him about the tickets.

1956

1 9 ewsr

2 Then Robert Green testified, and he told you,
3 by and large, the same thing that I have already told you,
4 and I am not going to burden you with it except for
5 one, what I consider, significant factor. Mr. Greene
6 testified here that in 1970, now, that he feels that
7 screening had value. How did he determine that? By
8 going back and looking at the records. That becomes
9 significant because Mr. Wohl would suggest to you in
10 his closing arguments that Mr. Daley must have known
11 that that screening, even if it was screening, had value.

12 Then I took Mr. Greene, and I am not saying
13 that Mr. Greene is a lawyer, I am just saying to you,
14 if you pardon me using an ethnic word, that may con-
15 venience Mr. Greene, testified before the Grand Jury
16 and I confronted him with it, and how did he testify?
17 He said, I believe, that that material in the yard
18 was waste material and, I believe, it had no value.

19 Now Mr. Wohl put it back. "Did you check your
20 records in the interim"?

21 "Yes; now I found out we sent down a barge
22 a day and that it had some value."

23 This is the man who runs the quarry. He
24 believed honestly when he testified before the Grand
25 Jury that it had no value. Now they are saying

10 ewsr

1957

1 "Convict this man because he knew it had value." Put
2 that together for just a minute. See if that flows
3 logically. See if that makes sense to you. He also
4 told us about giving screening to Alecca and that the
5 third time he released it because he wanted to avoid the
6 embarrassment of his boss finding out. He also was
7 pressed on the question of economic situation, interesting-
8 ly enough. He said "No, I did it as a community gesture".
9 This is Mr. Wohl's witness. This is the man that Mr.
10 Wohl gave immunity to. He gave immunity to Mr. Turco,
11 to either of those people who had something to hide, came
12 out and said "We were afraid of economic threats that
13 they would close us down."

14 Did either one of them say it? Mr. Wohl
15 pushed Mr. Greene, and what did Mr. Greene finally say?
16 You know, they might. I think Judge Lasker said do
17 you mean they'd go by the book, the union book? He
18 said maybe. What did you say, a community gesture?
19 Is that unusual up there?

20 The witness next was Anthony Naccarato who
21 drove the bulldozer up. He was asked "Why did you do it"?
22 He said really as a favor. This is on Pag 527, don't
23 take my word for it. Then he is pressed again by Mr.
24 Wohl. "If you didn't go up, what might have happened"?
25

1 ll ewsr

1958

2 "I might not get a steady job later or some--
3 thing."

4 This is economic fear? This is the substance
5 beyond a reasonable doubt, "I might not get a steady
6 job later or something"? Reasonable fear or is it fear,
7 and I didn't even push this issue with him but Naccarato
8 was a member of the opposing force to Daley, and that's
9 the best that he could come out with. No threat.

10 On cross-examination he made it vert clear, and
11 he also indicated there is no great problem in taking
12 a job far away from your house, that he was appreciative
13 for the time the union got him a job in Newburgh when
14 there was no work in Kingston, and he drove gratefully
15 to Newburgh to do the work.

16 The next witness was Alton Stewart. He
17 didn't find out where he was going until he got up to
18 Windham. He didn't know what was on the truck. He drove
19 up and he saw Daley. He didn't know whether it was
20 waste or not. He delivered, previous to this, three
21 or four loads for Alecca. He was asked by Clausi whether
22 he wanted to go, and Clausi, he says, said to him
23 "You better make the trip if you want a job". I said
24 to him -- no, Mr. Wohl said to him, "What do you think
25 would have happened if you refused"?

12 ewsr

1959

"There would have been a possibility that I may not have gained employment through the union."

Then I asked him on cross-examination, "Did you know Mr. Clausi"?

"Yes."

"Did you know him a long time"?

"Yes."

"Did you take him seriously?"

"No."

"Were you afraid of him?"

"No."

This is a guy who knew him who didn't take him seriously. You think about that. He was offered to you as a witness. He told us that he hauled with a Kozlowski truck to Alecca and didn't get paid, and he told us that jobs don't necessarily come through the union. He told us from 1970 to 1975 that he worked steadily for Kozlowski, didn't go back to the union, continued to work for Kozlowski.

Think about it when you think about Mr. Kozlowski's testimony. He also told us that nobody takes Mr. Clausi seriously.

The next witness was Qualtere. He tells you, Mr. Qualter does, the prosecution's witness, that Mr.

13 ewsr

1960

1 Clausi asked him to drive some waste material to Ted
2 Daley's camp, and both times Clausi told him it was
3 waste material. He tells us about going up there. He
4 tells us it was supposed to be waste. He tells us
5 the reason for going, Mr. Wohl asks him, "You are
6 working so you go or else you don't work."
7

8 [Continued on next page.]
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1961

Daley

9A

1 l gwsr

2 Then he says, "I don't think I would have been
3 working."

4 And then Mr. Wohl says to him, "What is
5 Kozlowski's reputation for truth and veracity?"

6 Do you know what he said? That is Qualtere,
7 one of the opposition with Kozlowski. The word he uses
8 is "fair." He doesn't hate Kozlowski. "Fair." That
9 is their witness put on to testify as to the truth and
10 veracity of one of their start witnesses, Kozlowski.
11 That witness says "Fair."

12 Then there is a little byplay. He tells about
13 being bumped off a job by Ted Daley, Jr. We pinned him
14 down.

15 "Do you know whether Ted Daley had more
16 seniority than you?"

17 He didn't know whether Ted Daley was more
18 entitled to the job than he was, when we get down to the
19 nitty-gritty.

20 As a matter of fact, I suggest to you that
21 if you wanted to hear his testimony again it is replete
22 with not remembering a thing that happened, but he does
23 remember what Clausi said to him.

24 He also told us that he may have told many
25 people that Clausi is a clown. He couldn't remember

1 2 gwsr

2 anything about when the conversation took place, how
3 it happened.

4 Now, let's get something straight. A lot
5 of people drove trucks. We are not contending the trucks
6 went up there automated. People did drive trucks.
7 The putting on of a number of witnesses to say, "We
8 drove trucks" really adds nothing to the case.

9 It may be suggested to you Mr. Newman is asking
10 you to take his testimony where he says "waste" but not
11 the rest of his testimony. I am not asking you to
12 take any of his testimony. I say he testified to hurt
13 Daley.

14 The next is DiMeo. I won't burden you with
15 a whole edition. Mr. DiMeo is a mechanical engineer,
16 had nothing to do with this union, and he would have you
17 believe he stood for a half hour to 45 minutes watching
18 a truck being loaded with white beams when it wasn't
19 part of his job. He also had the temerity to tell you that
20 the timbers which are lined up on a highway construction
21 job for thirteen months weren't hit into by trucks
22 and cars. Does that square with your recollection, with
23 your human experience and knowledge?

24 The next is Mr. Evans, yes, he drove a bull-
25 dozer up there.

1 3 gwsr

2 The next was Dave Alexander. He didn't know
3 how his bulldozer got up there. It wasn't unusual for him
4 on weekends to give people his bulldozer.

5 Most important, he did blacktopping for Mr.
6 Daley. His bill, and it is interesting because Mr. Wohl
7 would have you believe Mr. Daley was out to get something
8 for nothing, see, and that's how he operated. When
9 you get things for nothing you don't question. Take a
10 look at it. It is in evidence. The date is August,
11 1971. Blacktopping to Dave Alexander, \$715. Not \$90.40.

12 I say to you this shows that Mr. Daley didn't
13 want something for nothing, because this guy Alexander,
14 he didn't have to go through any middlemen, Daley.
15 Alexander was right in his union. If you are so power-
16 ful, you call up, "Dave, I need blacktopping." You
17 can't wink over the telephone. You can say, "Dave,
18 I need blacktopping" and Dave put it down and say,
19 "Dave, I will see you around."

20 It knocks the props out of their context
21 because it is the same time.

22 Leland Eaton testifies and he says he refused
23 to drive. He says Spada was there. Anything happen
24 to Leland Eaton? What would Mr. Eaton have you believe?
25 Leland Eaton was immune. He was immune because he was a

1 4 gwer

2 mechanic and he didn't have to worry about anything.

3 You heard Mr. Spada. He didn't tell him anything.

4 "You don't want to drive, don't drive."

5 Take a look at this book. Leland Eatons
6 work on the Callanan job for the entire job.

7 It is not my book. It is Clausi's book. I
8 didn't have it in my possession. They did. Look at
9 Leland Eaton and see if he didn't work to the end of the
10 job, not as a mechanic but as a truck driver.

11 I know Mr. Wohl might suggest to you we are
12 not saying that they had to fire people, he is saying
13 it was implicit. If Mr. Daley was so powerful and it
14 was so implicit, do you think it would encourage people
15 who wanted to support their family to say no? Would
16 you say these people were afraid but these were brave
17 people? If you analyze all the witnesses in the case,
18 their witnesses, those who were so concerned, it doesn't
19 give you one sentence that you can put together end to
20 end and say it serves a remarkable purpose for being
21 concerned, and the balance of them declining to and
22 nothing happened to them.

23 Then we have Mr. Brennan. What would Mr.
24 Brennan have you believe? That he refused to go and he
25 was not afraid of Clausi and he told Clausi off in no

5 gwsr

1
2 uncertain terms and two days later he was switched to
3 tonnage.

4 Ladies and gentlemen, I don't want to sound
5 like a broken record. Go through this book. He worked
6 by the hour. His hours are recorded in here. That's
7 how he got paid. He declined and he told it to Clausi.
8 It should have gone up the chain of command, like
9 tom toms.

10 "Alecca, Brennan refused to go."

11 "Daley, Brennan refused to go."

12 "On the Callanan job. Off the Callanan job.
13 Send him to Canada."

14 Did it happen? That's real life. That is not
15 suggestion. It is real life. Look at it. It's here.

16 The last witness, I know you will be glad to
17 hear me say that, is Kozlowski. He had his business as
18 an owner-driver. Clausi called him and asked him to
19 drive to Hudson Cement, and he tells us Clausi didn't
20 even tell him who it was for or where it was going.
21 He told us that in the past he has supplied trucks and
22 drivers to people as favors. He sais that Clausi wanted
23 three-inch stone and he had a conversation with Clausi
24 and then Clausi said fine stone, 3/8 stone, 3/8 stone.

25 They are talking to you about value and Daley

1 6 gwsr

1966

2 knew it had value, but an interesting thing happened.
3 When the trucks drove up there that Friday night, two
4 trucks broke down. They have this valuable commodity
5 on it, this valuable stone, which Mr. Wohl would have
6 you believe is \$9 a ton, and each truck would have
7 fifteen tons. That's 130 bucks. What do they do with
8 the two trucks with the valuable stone on it? Do you
9 remember? You can't answer me. I have you at a dis-
10 advantage. I can only talk to you. They take it and they
11 dump it on some farmer's land. Daley told them to do
12 that? According to this, that's \$270 of valuable stuff,
13 after driving up this distance, they value their
14 gasoline, their trucks, they are under economic pressure.
15 You had better believe they would get on the phone and
16 say, "Daley, we have two of our trucks here. We don't
17 want to get fired."

18 They dump it on the farmer's ground.

19 Do you think the farmer would let them dump
20 pebbles on the ground? What does it suggest to you?
21 That it was quarry waste, maybe.

22 He goes through this conversation about picking
23 up the twelve by twelves. He goes through the conversa-
24 tion of driving up. He tells us the beams are fairly
25 good but he couldn't tell us whether they were used or

1967

1 7 gwsr

2 not. You know whose beams they were, and we will get to
3 that again. They were Maggiola's.

4 You remember Eddie Hahn, a man they put before
5 a Grand Jury, a man they questioned. Eddie Hahn told
6 you what happened. When he wanted the good beams,
7 Maggiola told him, "No dice, get the stuff from the
8 tressle."

9 I suggest to you that is what Mr. Daley
10 testified to and that was uncontradicted and you look
11 at their pictures. You look at the material displayed
12 in their pictures on the junk pile and you see if they
13 weren't bridge tressles. Use your own common sense.
14 He tells us about Clausi's reputation, he tells us about
15 getting his own jobs, and then he tells us something
16 that I think symbolizes his testimony and for that
17 reason I will tell you about it. Mr. Wohl says to him,
18 "Why did you give your trucks"?

19 That is the guts of this case.

20 He said, "I was interested in my drivers not
21 getting hurt."

22 Mr. Wohl said, "What do you mean?"

23 He said, "I didn't want them to go on a tonnage
24 basis."

25 Then later on in his cross-examination we get

1 8 gwsr

2 to this -- I apologize. I forgot the name of the man,
3 the man Mr. Wohl was talking about to you, where the
4 meeting took place with Kozlowski and Spada and Daley
5 to straighten out this fellow's welfare and pension.

6 THE COURT: Costanzi.

7 MR. NEWMAN: Thank you. In this conversation
8 with Costanzi, what did Clausi tell us?

9 Kozlowski says, "I elected to go on tonnage.
10 It will hurt your drivers."

11 I said, "Do you make more money on tonnage?"

12 And he says, "Oh, yes".

13 I said, "Let me ask you, Mr. Costanzi, when
14 you could make more money you weren't that concerned
15 about the drivers".

16 "I was concerned about the wear and tear
17 on the trucks."

18 "Did you give up that Costanzi job when you
19 went on tonnage?"

20 "No, a lot of times I negotiated on tonnage
21 jobs."

22 Do you think his concern in driving up there
23 was concern for his drivers? Do you really think that?
24 Do you think he went out and volunteered time and time
25 again out of concern for his drivers to get those tonnage

1969

1 9 gwsr

2 jobs?

3 I submit to you that he then came in and
4 through surmise and suspicion it was then suggested to
5 you "Look, you know what really happened to him. He
6 went and he spoke to the FBI in '73 and then he spoke to
7 Kearney in '73 and right after that he stopped getting
8 work."

9 But that's not true. Everybody told you
10 that's not true. Let's forget all about that. As a
11 result of that, that is the economic loss somebody may
12 suggest to you he sustained. And he got up here and he
13 said to you, "I sustained an economic loss. '74 I did
14 no waork. Mike Spada had all the work. I did nothing."

15 I subpoenaed his tax records. I won't
16 burden you with them. Suffice it to say in '72, which
17 was his great year when he wasn't discriminated against,
18 he made \$52,000 gross. In '74, the discriminated year,
19 he made \$74,000 gross. What will probably be more
20 significant to Mr. Ray, the accountant, is that in those
21 two years, in '72, the year when he wasn't discriminated
22 against, he showed a net loss of six hundred some-odd
23 dollars. In '74, when he was being discriminated
24 against and he was being pushed to the wall, Mr. Wohl
25 said to him, "What does it show as a net figure?"

1 10 gwsr

2 \$11,000 profit. Discrimination like that
3 should happen to me all the time.

4 I submit to you there wasn't a kernel of truth
5 in that. And if he was discriminated against in '73,
6 why does he go out and buy four new trucks? Is that what
7 somebody does who is not getting work or who feels
8 discriminated against? Most importantly, why would Mr.
9 Daley have fired him? As he says, why would Mr. Daley
10 have discriminated against him? You heard, and I will
11 get back to this, I know it pains you to hear this, but
12 I will get back to it. We wanted to give you an inter-
13 view between our investigator and Mr. Kozlowski, and
14 I didn't bring an investigator in, he sat in the court
15 throughout, I didn't have him take notes that what he
16 says happened occurred. I did something else. I
17 gave you the tape recording. I gave you an exact dupli-
18 cation of the conversation. "This is a tape recording,
19 you may have a copy of it. We are taping it for ac-
20 curacies."

21 Mr. Kozlowski sat here and said, "That's
22 exactly the words I said."

23 On it what does he say? First he says
24 nobody forced him to go up, the men volunteered, if
25 anybody discriminated against him, it wasn't Daley, it was

1971

1 ll gwsr

2 Clausi, and there was no pressure brought. That's
3 what he said in 1973.

4 After hearing this why would Mr. Daley dis-
5 criminate against him? Mr. Wohl asked you to use your
6 God given common sense. Use it. I submit to you this was
7 predicated -- there is a certain class of people who feel
8 there is a conspiracy against them like this. I have a
9 beard, I am not a psychiatrist, but I suggest to you
10 that you consider whether Mr. Clausi has ever looked at
11 himself in the mirror and said, "The reason I failed in
12 my business was because I was a lousy businessman" or
13 "I couldn't get the work" or because Clausi said when
14 Fitzgerald heard he was coming on the Callanan job,
15 Fitzgerald almost choked on the olive in his martini.

16 Was that because his reputation was bad? He
17 wouldn't confess up to it. It had to be the union.

18 It waSn't the last witness for the prosecution,
19 but it was Mr. Herb Sutton. He typifies what happened
20 here. Also, there is an interesting insight into
21 Kozlowski. He took this book out of Clausi's truck.
22 Okay? I said to him, "Did you ever give it to the
23 FBI"?

24 He thought. Talking about pausing and thinking.
25 He paused and said, "I don't think so. I don't believe."

1972

1 12 gwsr

2 Would you know if you gave the book to the
3 FBI or not? Is that something that would cause you to
4 pause? Sure, if you paid twelve or \$14,000 for a piece
5 of property might, a date might, but if you gave a
6 book to the FBI? How many times would you do that?

7 "No, I didn't."

8 He is not sure. He pauses, "No, I didn't."

9 Do you think he is here with an axe to grind?
10 Do you think his trip to Washington with the opposition
11 was significant? He tells Mr. Wohl on cross-examination
12 he wasn't politically active, until I confronted him
13 with his asking to become a candidate for office to
14 qualify.

15 What does he say to you or say to you, ladies
16 and gentlemen? "I did it to harass Daley."

17 Do you think it shows motive?

18 The witness who I think typifies what happened
19 here is Mr. Sutton. Mr. Sutton is put on here and he is
20 asked, "Did you drive up there"?

21 "First I didn't want to drive up there but
22 then I realized I had better drive up. Mike Spada told me
23 'Keep your mouth shut and drive up.'"

24 So I drove up.

25 Spada testified that that conversation never

1 13 gwsr

2 took place, that he never told him anything of the kind,
3 and that's borne out by what Mr. Spada said to Mr. Leland
4 Eaton and Mr. Eaton confirmed.

5 More important than that Mr. Sutton said
6 "I refused to go."

7 Then he said, "I only worked another couple of
8 days."

9 Then, lo and behold, I confronted him with
10 this book. We are back to the book. He worked right to
11 the end of the job with everybody else. The only one
12 who worked longer is Clausi. Don't take my word for
13 it. Look at the book. Forget about what Mr. Wohl should
14 later tell you, "We are not suggesting people would really
15 be fired, it is what is in their mind."

16 I suggest to you there is no reasonable basis
17 for being in their mind because actual facts show people
18 who didn't want to drive, nothing ever happened to them,
19 so there would be no reason, unless you are one of the
20 people who walk around and say, "Did that guy in the
21 subway look at me?" Or "Hey, that is not reasonable."
22 Or like some women, "That guy is making a pass at me,
23 that guy is trying to grab me."

24 That is not reasonable fear. They say that
25 is what this case is about. I say fact, that should be

1 14 gwsr

2 the basis for this.

3 At this point a defendant can sit on his hands,
4 he doesn't have to lift a finger, he doesn't have to
5 do a thing. He can say, "Put up or shut up, prosecutor."

6 If he requested it from the Judge, the Judge
7 Id charge you you can draw no inference, a defendant:
8 doesn't have to offer a witness and, more importantly,
9 to telescope a lot of things, he doesn't have to take
10 the witness stand.

1975

9B PM

gwb-1

1 Mr. Daley and I didn't elect to do that. We
2 brought you witnesses. Okay? Every person who was
3 mentioned in every single conversation, and Mr. Wohl over-
4 looked this, every single person referred to in every single
5 conversation that was of any importance we brought here.
6 We let you hear him. We didn't give them subpoenas and
7 take the subpoenas back. We didn't interview them four
8 times and say, "Let me see, you come down tomorrow and if
9 I need you I will call you. Don't call me. I will call
10 you."

11 We brought them here. They talked about
12 a Yonta. They talked about a Mayone. We mentioned a Chet
13 Davis. We brought him here. We didn't leave it to your
14 imagination. They mentioned Mr. Daley runs the executive
15 board.

16 We brought you Mr. Ebert, uncontradicted as to how
17 the executive board works, uncontradicted as to the fact
18 there were battles. Sure, Mr. Wohl would have you believe,
19 "Mr. Ebert made the admission as to how things worked up
20 there, there is no hiring list."

21 That is not what Mr. Ebert said. We provided
22 the person involved in every single conversation and we
23 had no obligation. Let me go to Chet Davis. If
24 Mr. Daley, as powerful as he is, if you give me no other
25

1 gwb-2

2 credit in this case and you reject all of my arguments,
3 please let me have one consolation for an old man, okay,
4 and that consolation is that if I wanted to prepare Chet
5 Davis to lie, I could have done a better job. Okay? If
6 I wanted to make Mr. Daley look powerful and I wanted to
7 make Chet Davis come in and dance to my tune, I would get
8 him up there and he would say, "I heard every word of the
9 conversation, I heard Alecca say to Daley and Daley said
10 to Alecca there were 40 trucks or 20 trucks, 25 men,
11 \$50 for gasoline, \$750, and I saw Mr. Daley count out \$750
12 and hand it to Mr. Alecca and Mr. Alecca put it in his
13 pocket."

14 Beautiful.

15 Now I have a witness. That is not what happened.
16 Mr. Davis came in and told you what he saw and he
17 heard, and we are saying to you, and you will be charged on
18 circumstantial evidence, that circumstantially you may
19 infer that this supports the testimony of Mr. Daley there
20 came a time when he gave money to Mr. Alecca and Mr. Davis
21 said he heard a conversation about trucks, he didn't hear
22 the substance, he didn't see the money. Suffice it to
23 say if Daley is that powerful, you rest assured Davis
24 comes in and testifies in the best way for us. That
25 didn't happen here. He called them as he saw them, as

1977

1 gwb-3

2 they say in the ball park.

3 Do you think that this father of eleven kids
4 would come in here -- I am sorry -- I am talking about Ebert.
5 I just gave Mr. Davis six more kids.

6 Do you think this father or five kids would
7 come in here and perjure himself as to this kind of conver-
8 sation? If we were going to do it wouldn't we do it in
9 a way to make the cheese binding?

10 The next fellow is Mr. Ebert. He has eleven
11 kids. He came down and ran down this union. He told you
12 what the economic conditions were. He told you specific
13 facts which are uncontradicted, that they kept cutting
14 the hours in that area. That knocks the props out of
15 Kozlowski's argument he was discriminated against, and it
16 supports the fact there is economic ruin up there and
17 through nobody's fault other than economic conditions and mayb
18 some of you have suffered it in the city.

19 He tells about facts, not surmises and suspicion,
20 that in '72, '73, '74, '75 and '76, they cut the hours so
21 men could qualify for dental and medical benefits. He
22 told you how the executive board works. He told you about
23 the Donnybrooks. Then we brought in Harley Williams and
24 he told you about what he drove up there and Mr. Wohl is
25 making a big deal about the grand jury minutes and Mr.

1978

1 gwb-4

2 Wohl is making a big deal about an interview by Mr. Jaffe
3 not in evidence.

4 Okay. One thing is for sure. Mr. Jaffe
5 told us that this conversation with Harley Williams en-
6 compasses about eight or ten lines. Okay? It happened
7 in 1973. You really believe that Mr. Jaffe, after talking
8 to all those people, remembers that? Okay, maybe he does
9 remember it. Now, if Harley Williams, okay, really testi-
10 fies so badly against Mr. Daley in the grand jury and
11 elsewhere, and they bring him down here and he is inter-
12 viewed by this able Assistant United States Attorney with
13 his able associate, and he is damaging against Daley, do
14 they say, "Go hom, Harley, you don't call us, we will call
15 you," and then call him at night and say, "We don't need
16 you"?

17 Really, if he told Jaffe all those things,
18 don't you think he would have been here as a prosecution
19 witness?

20 THE COURT: You have another 15 minutes.

21 MR. NEWMAN: Okay, Judge. He told you about
22 the timbers, these were the same timbers and put on the
23 trucks.

24 The next witness was Yonta, Michael Yonta.
25 Fred Stratton. Stratton told you about delivering that

1979

1 gwb-5

2 bulldozer to Mr. Alecca.

3 More important than that, these were all people
4 who had come in and been interviewed by the Government
5 and testified. We brought Clyde Hahn in. Every person
6 was a party to every conversation. We brought Clyde Hahn
7 in. We put Mr. Raskin in to testify about the conversation.
8 Every person Kozlowski said was present we put on that
9 witness stand for you to hear. We brought Mr. Spada in.
10 It is interesting. I know Mr. Jaffe spent a lot of time
11 on Michael Spada.

12 Your Honor, could you make it 20? Could I
13 steal five more minutes.

14 Thank you very much.

15 This went into evidence. First I cross-examined
16 Mr. Jaffe and I cross-examined Mr. Jaffe on the grand jury
17 testimony and I asked him a question which Judge Lasker
18 said is proper argument and I invite your attention to the
19 questions and answers, and I ask you are they leading? I
20 respectfully submit to you that except in one place the
21 word "stone" didn't come out of Spada's mouth. The word
22 "stone" in every single leading question Mr. Jaffe put to
23 Mr. Spada was contained in Mr. Jaffe's question and all
24 Mr. Spada had to say was yes, yes, yes.

25 Do you think he invited Mr. Spada to comment

1980

1 gwb-6

2 on those questions like he would have you believe? I forget
3 about that. More importantly than that, Jaffe was brought
4 in here. They say you shouldn't believe Spada. Jaffe
5 was brought in here to put on the finishing touches.
6 He said in his notes Spada never said waste, he said stone.
7 He wanted to put in three conversations. I stood next
8 to him. He is a good lawyer. I was playing with a hand
9 grenade. It became apparent when you went through those
10 three conversations. One was a conversation not where
11 Spada used the word "stone" but where Spada was relaying
12 what Clausi told him.

13 The second one was a conversation that Spada
14 was relaying that he had with his son, and the third one,
15 and that is very interesting, now he would have you believe
16 that Spada used the word "stone" except, interestingly
17 enough, it's a whole phrase, and I asked for a phrase to
18 be put in and you people, after three weeks said, "What is
19 he nitpicking about?"

20 I will tell you what it is nitpicking about.
21 They put into evidence "loaded at dock stockpile" and then
22 they jumped down and said, "dumped stone near house."

23 I asked that the rest of it be put in because
24 the way it is punctuated is significant. The line that
25 I had put in is "Mike Alecca went with Spada, Jr.," and after

1981

1 gwb-7

2 that on the next line comes the words "dumped stone
3 near house."

4 Not Spada, Jr., Spada, Jr., not Spada, Jr.,
5 Mike Alecca. That expression all goes together.

6 Then there is a hyphen. We all know what a hyphen
7 is.

8 Then it says "Clausi rode with Spada, Sr.R
9 Having nothing to do with the stone.

10 I submit to you that in this entire statement
11 there is not a word attributable to Mike Spada using the
12 word "stone."

13 And I submit to you that the way to have done
14 it is the way that we did it with Kearney, not let you rely
15 on somebody's notes four years after the events. A tape
16 recording. Do you really believe the FBI and the United
17 States doesn't have dictaphones? Do you really believe
18 the U.S. Attorney's office that can reach up to Windham
19 with the flip of a wrist doesn't have a tape recorder?

20 Do you really believe you ladies and gentlemen
21 of the jury should be asked to decide an important issue
22 based on somebody's notes four years after the event
23 when they don't reflect everything or should you listen to
24 the tape recording and hear Mike Spada said stone or waste?

25 We didn't do that with you. We gave you the

1982.

1 gwb-8

2 real merchandise.

3 Mr. Spada indicated to you he didn't end up
4 like Mr. Kozlowski did.

5 Mr. Wohl would have you believe Mr. Spada was
6 an absolute liar and came in here and lied and lied.
7 One thing. Ask yourselves, Mr. Spada is down here, he
8 is interviewed by Mr. Wohl in pretrial preparation, he
9 is given a subpoena and as he is leaving to come in and
10 testify as a Government witness, the subpoena is taken
11 away. He is given a subpoena because he will testify for
12 Daley? The Government gives him a subpoena for that
13 reason? The Government is telling you they subpoenaed
14 a lawyer or did they suddenly come to realization -- ask
15 yourselves. They don't take me into their consultation --
16 or do they come to the realization this man will come in
17 and call it as he sees it?

18 Also, Mr. Wohl makes much of that grand jury
19 testimony, and you have in that very same grand jury the
20 idea that this material was mixed with sand. And also,
21 interestingly enough, Mr. Spada tells you that he spoke
22 to Daley, told Daley he had been before the grand jury,
23 spoke to the FBI and nothing happened to him. Mr. Wohl
24 would have you believe his business prospered. He brought
25 records in here pursuant to their subpoena and the records

1983

1 gwb-9

2 tell you who the employers were and how he got the jobs.
3 Not the way Mr. Kozlowski surmised.

4 The next witness is Mat Fitzgerald. What did
5 he have an axe to grind? Who could make it believable?
6 He came in, he was the president. He told you what
7 happened at tallanan. They came to him and asked him. He
8 called the foreman John Callanan, and said, "What's this
9 stuff?"

10 He said, "It is worthless. Give it to him."

11 Did you hear Mr. Wohl tell you that they had
12 interviewed Mat Fitzgerald and they didn't subpoena him?
13 We brought him to you.

14 The next witness they were unhappy with. That
15 is Sidney Mastro. Sidney Mastro came in and told us
16 something very interesting. He told us that he was told
17 by Mr. Alecca that unless he, Mastro, apologized and
18 bought half of his dynamite from somebody he wouldn't get
19 the contract at Hudson Cement. Who is the big man in
20 that area? Daley? Who are the people he is afraid of?
21 Who is the lily white guy? I say you can consider that
22 when you consider Alecca.

23 Then Marco testified about his friendship with
24 Ted Daley. I did ask him to see witnesses. I am lazy
25 and I didn't want to run up there. He told you it is not

1984

1 gwb-10

2 a five-day a week job as a business agent, and he was
3 originally appointed and when he couldn't get elected he was
4 reappointed. Then we brought you character witnesses.
5 You may say what is the significance of that? We brought
6 you a list of nine people running from a priest right
7 to the former Governor of the State of New York.

8 Keep one thing in mind. These people took time
9 out of their busy schedules, time out of their life, they
10 submitted themselves under oath on that witness stand and
11 they allowed themselves to be cross-examined. Judge
12 Lasker asked Mr. Love, from the Israel Bank, "What occasion
13 would you have to have discussed Mr. Daley's reputation
14 for trust, veracity and honesty?"

15 "When we considered him for an appointment of
16 Man of the year."

17 Now I guess Mr. Wohl will get up and say, "You all
18 know he controlled the Israel bond drive, don't you, and
19 that is why they were going to make him man of the year,
20 because they had to have the support of Local 445 get
21 stone from the quarries to Israel."

22 They all came out for Daley, every single one of
23 them.

24 The next witness was Theodore Daley. Let me
25 tell you something, it is not easy to be cross-examined

1 gwb-11

2 and it is not easy to be cross-examined by a prosecutor
3 that is assisted by another prosecutor and that other
4 prosecutor comes in as a witness.

5 Do you think Jaffe had an interest coming in
6 to prepare the cross-examination of a defendant? Do you
7 think that is a passing curiosity in the outcome of the
8 case? Ask yourselves that. But Mr. Daley, as he did in
9 1956, when he undertook to take a union on its knees,
10 didn't shy away from the challenge. He could have sat
11 there and I could have presented the case without him.
12 The Judge would have instructed you, had I requested it,
13 you could have drawn no adverse inference by his not taking
14 the witness stand. He didn't choose. He chose to
15 get up, expose himself, take all the risks, all the darts,
16 all the arrows, all the ability of Mr. Wohl and all the re-
17 sources at his command and face cross-examination, as he
18 did in '56 as a father with two kids, when he took a union
19 that was down on its knees, a union with 2000 men up to 8000
20 men, took a union in bankruptcy and got it an income of
21 \$2 million a year, took a union that was on its knees and
22 got it to a welfare point of thirty-five to \$40 million.

23 And while I am on that subject, and I am rushing,
24 and I apologize, thirty-five to forty million dollars.
25 If he was a crook, then he is incompetent. Do you know

gwb-12

1986

1 why? Because if he wants to steal, 35 to \$40 million
2 in that pension fund, and did you hear a witness after
3 he testified put on that witness stand to say he took
4 a quarter out of that pension fund?
5

6 With all their resumes, with having these
7 records since 1973, did you hear one FBI agent, one
8 auditor get up there and say under oath, "Mr. Daley did
9 this. He took \$42"?

10 They are making a big deal about a dispute be-
11 tween him and the International. He ran against Fitz-
12 simmons and you all know who Fitzsimmons is.

13 And thereafter they come in and they do the
14 unusual audit. Okay. He contests it, he looks and he
15 gives them the minutes. He talks to his lawyers, and he
16 sends them a check. Why? Because the union welfare
17 fund is involved. He doesn't back off. There is a
18 question. "Here is a check out of my pocket." Did he
19 misappropriate any money? You know he didn't. You know
20 he didn't. But beyond all of that, he pays the money.
21 In addition to paying the money they find another foucher.
22 They say, "You weren't authorized to buy that clothing
23 when you were down in Washington and you stayed for an extra
24 week and you were down in Miami on union business."

25 He could litigate it. He pays the \$500.

1987

1 gwb-13

2 Not only him, but everyone he told to buy clothing, they
3 pay the money.

4 A period of time goes by and, yes, there is
5 a document in evidence and yes, you are welcome to read it,
6 and, yes, it has that letter excerpt in it and in that
7 document, okay, it sets forth the whole history of this
8 litigation. A year goes by. Nothing happens. They
9 pay all the money back.

10 Suddenly the dissident element in the union,
11 all of whom have sat here and all of whom have run against
12 Mr. Daley and lost, say "trucks went up there, it is a
13 common practice, but help us get Daley out of office at
14 the polls, you assist us."

15 They file a complaint against Mr. Daley.
16 Who is the Judge? Mr. Fitzsimmons. Mr. Wohl says to
17 you, "Conviction, conviction. Did you know he was con-
18 victed by the International?"

19 The International Teamsters Union in Washington,
20 D.C. headed by Fitzsimmons convicted him.

21 Okay.

22 (continued on next page.)

23 End 9B

ewb-1

1 some people might just suggest to you that
2 that is not really a conviction, that is an accolade, but
3 I won't do that. You think about it. I suggest
4 to you that that letter contains everything that happened.
5 In 1975, a judgment comes down saying that he is now,
6 after having paid the money back, guilty based on a peti:q
7 tion filed by the dissident elements and his cross petition
8 to get one of them removed from the union.
9

10 That is what Mr. Wohl is suggesting to you
11 shows that he is a dishonest man and he appeals it, he
12 fights it, and he comes into this court, the U.S. District
13 Court before Judge Pollack. It is all set forth in that
14 letter, read that letter and see if it doesn't bear out:
15 exactly what Mr. Daley said from the stand.

16 He didn't know in July about a trusteeship.
17 He found it out in November and that proceeding before
18 Judge Pollack was in November. He found out about it.
19 You will see it in that letter. When he writes in
20 1975 he refers to the threat of trusteeship. He has become
21 aware in 1975 of the 1973 events as a result of the 1974
22 proceedings. But look, something is very interesting.
23 Mr. Wohl is very capable and it is very hard to sit up
24 there and be cross-examined, but he was cross-examined.
25 He bared his chest, he exposed himself, but one thing

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1 ewb-2

2 is for sure, he testified in area after area after area,
3 going to the facts and you can poo-poo whether he paid
4 \$700, and Mr. Wohl says "What is the significance of
5 all of this?"

6 I will tell you what the significance is.
7 He would like to overlook them. It shows that Mr. Daley
8 paid cash and that was his habit, so there is nothing
9 strange. Do you think it is really unusual to give a
10 friend, a guy who has been within the union movement for
11 14 years, money and not ask him for a receipt?

12 Do you think that is really unusual? Did you
13 see them bring Alecca back to deny any of that? Why
14 not? Did you see one rebuttal witness on the substance of
15 Mr.Daley's testimony? They brought in what they call two
16 rebuttal witnesses. You know, interestingly enough,
17 Mr.Wohl didn't mention them in his summation.

18 Who were those two gentlemen? Tompkins and
19 Lawrence. You saw those men. What did Mr. Daley say
20 to you on direct examination and cross-examination? He
21 said that he thought that Mr. Lawrence said to him "You
22 could probably get it the following yearR, you heard me --
23 first,Mr. Wohl asked him on cross-examination, "Did you
24 ever tell that to anybody?

25 "A Yes."

ewb-3

1990

1 He asked him three times, then the fourth time
2 there was a question as to whether he understood the
3 question, so they asked him a fourth time.

4 He said, "No, I never told anybody."

5 I got him on redirect.

6 "We can only work up to November and if some-
7 body would have called me and I was busy I would have told
8 him to wait until next year."

9 Mr. Daley paid every bill. It supports his
10 position. Then an interesting thing. Mr. Lawrence is
11 asked, "Do you remember a call around that time from
12 Mr. Daley?"

13 "I remember a call; I can't pick out the year."

14 Does that deny what Mr. Daley said? Does it:
15 belie it? Mr. Lawrence says there are 17 contractors up
16 there, but only two trucks big enough to haul any stuff.
17 Okay. Does it belie what Mr. Daley said about the other
18 gentleman, the gentleman who did the construction work on
19 his house, that the man was in the house business, and
20 didn't the man tell you, and didn't both of them tell you
21 that in fact they had small crews and they can only work
22 one job at a time, and didn't the other gentleman tell
23 you, and that is Mr. Tompkins, that "If I had one job I
24 would tell the guy I couldn't take another until I finish."
25

1 ewb-4

2 Does that belie what Mr.Daley said or,
3 does it corroborate? Are we here really trying a case
4 because Mr.Daley doesn't get along with the International
5 or are we trying this case because somebody is suggesting
6 to you that somebody had inarticulate fears that weren't
7 based on any kinds of reason?

8 He questions about the audit and the expendi-
9 tures and he goes through every single question. Sure he
10 paused. YOU are talking about events six years ago. You
11 are talking about testifying from a witness stand. You
12 are talking about being u nder cross-examination for eight
13 hours.

14 Let me tell you something. If his English
15 isn't the most polished, and he is not the smoothest guy
16 in the world, he is not here as the ambassador for the Court
17 ot St. James. He is here as a family man who took a
18 union off its knees and brought it up, and he is a truck
19 driver, okay, and there is no crime involved in it, but
20 he can't handle Mr. Wohl on cross-examination. He couldn't
21 answer as fast as Mr. Wohl, who prepared overnight with
22 the assistance of Mr. Jaffe, who had records for three
23 years, was able to cross-examine him.

24 Did you see one question that really showed
25 a violation of law with all of those resources available?

1 ewb-5

2 Did they confront him with any expenditures
3 that he made that were indictable? Did they ask him whether
4 he had ever been convicted of a crime? Why didn't they?
5 You can assume they didn't because they knew he wasn't.
6 You were being asked, ladies and gentlemen, based on
7 speculation, based on suggestion, hint and guess from in-
8 articulated answers, to say that a man who ran a union of
9 8000 people, who paid \$13,000 for the remodeling of his
10 house, \$13,000, paid every single bill and there wasn't one
11 vendor brought in here, why did he have to go to Tompkins?
12 If he is such a powerful guy, why does he have to go to any
13 of them? He just gets on the magic phone and says, "This
14 is Daley," and people drop everything and do all the work
15 for him. Think about the \$13,000, that 's what the
16 significance of it is.

17 Oh, sure, Mr. Wohl says, "We are not claiming he
18 didn't pay for everything."

19 I am calculating he paid for everything that he
20 did. Had he known there was any value attributable, you
21 may infer he would have paid for that also.

22 Ladies and gentlemen, I asked you at the
23 inception, because I see the far away look in Judge Lasker's
24 eyes, I asked you at the inception, and I told you that
25 there is a burden upon the prosecution to prove guilt beyond

1993

1 ewb-6

2 a reasonable doubt. I said to you they have to do it by
3 credible, believable evidence. I asked you, if you
4 will recall, to keep that burden in front of you.

5 Now I ask you to take all the evidence with the
6 inconsistencies, the motives, the illogic and the factual
7 inconsistencies on the prosecution's side, recognize that we
8 produced character witnesses, and the Judge will tell you
9 about the character witnesses, if believed, can create a
10 reasonable doubt by themselves.

11 Take that. Take our whole defense case when
12 we had no burden, when we brought you every single witness
13 who is a witness to a conversation, and we took the defend-
14 ant and he bared his chest and he took the witness stand
15 and testified. Put it down against this mark or this
16 measure and say to yourselves, "Does the merchandise meet
17 the mark?"

18 I think your answer will be no, and I think
19 your answer will be no when you say, "Ted Daley, not guilty
20 on all charges."

21 Thank you, and Judge thank you for the
22 extra five minutes.

23 THE COURT: Thank you, Mr. Newman, for
24 your presentation.

25 Ladies and gentlemen, I know you are anxious to

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1 ewb-7

2 leave, but I think you would rather have a couple of
3 minutes before we hear Mr. Wohl again.

4 It will be a short talk that he gives this time.
5 I will limit the amount of time that he takes, although
6 I don't know if that will be necessary. I promise you
7 that you will be out of here by a quarter past seven.

8 (Recess.)

9 THE COURT: I want to make one announcement,
10 and one piece of information for you. I know how hard
11 you have worked today and I guess all of us have worked
12 just as hard. It is our job and not your normal job. I
13 will have to ask you to be here at 9:30 tomorrow morning
14 because I have a matter of very great importance at 11:00
15 o'clock, and I want to be sure that I can deliver my charge
16 to you so that you can understand it and so that I can
17 iron out any legal questions there are with counsel.

18 We will meet at 9:30 tomorrow, and I promise
19 you I will be ready to go. I ask counsel now if they
20 have any questions they want to take up with me, to come
21 by 9:15 to my chambers tomorrow morning. The only thing
22 is this. I don't think any of you have left this build -
23 ing as late as you will be leaving tonight. The subway
24 stations that you usually take get closed at 6:00 o'clock.
25 You can either cross across the street and pick it up

1995

ewb-8

there, but you have to have tokens. If you don't have tokens, walk one block south to the Brooklyn Bridge entrance under the Municipal Building, and I think there is a toll booth there, or we will help you out if we can among ourselves to give you tokens.

All right, Mr. Wohl.

MR. WOHL: Your Honor, counsel, Mr. Foreman and ladies and gentlemen of the jury:

Thank you for your patience and attention. I ask you merely to bear with me a little bit longer. I would like to go through some of the arguments that Mr. Newman gave to you. I think you will understand that the fact that I don't comment on some of the arguments doesn't necessarily mean that I agree with the ones or the Government agrees with the ones that I don't comment on.

Basically, as I think we told you all along, the Government is really relying on your common sense and judgment in this case, and that is the judgment you are going to come to and going to rely on eventually in any event. I would like to see if there are, perhaps, some things I can say to suggest what the Government's position is to you and also to cast some light on some of the things that Mr. Newman said. Fundamentally, we would submit to you that even despite Mr. Newman's very eloquent,

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1 ewb-9

2 very forceful argument on behalf of Mr.Daley who has been
3 well-repreented throughout the trial, certainly there has
4 been nothing shown to interfere with your coming to the
5 appropriate conclusion that you should come to which is
6 that funamentally Mr.Daley got the driveway, he didn't
7 pay for it and he got it relying on a coercive-type
8 of situation that resulted in fear to the employees and
9 the employers involved.

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11
12 (continued on next page.)

13 End 10A PM
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2 All right, what did Mr. Newman say? He said
3 for some reason or other the power of the FBI is so
4 enormous, and that he gets some points for producing
5 the witnesses Lawrence and Tompkins, or that we didn't
6 produce certain witnesses.

7 First of all, I point out to you that the
8 defense has the subpoena power in this case, too. If
9 they want to call witnesses, they can call witnesses,
10 and they did call a number of witnesses. They produced
11 a former Governor of New York in this case. Also, we
12 produced the witnesses who really had something to say
13 about this right at the end of the case after Mr. Daley
14 doesn't call Mr. Lawrence and Mr. Tompkins and tells
15 about all the phone calls that he is making to try
16 and get this work done, and he just can't find a contrac-
17 tor up there in Windham who will build this driveway for
18 him. We give you Mr. Tompkins who says he didn't
19 even do that kind of work, so a call to him wouldn't
20 make a lot of sense.

21 We give you Mr. Lawrence who says that there
22 are seventeen contractors up in that area to do that
23 kind of work. Mr. Newman says well, there are only a
24 couple of trucks. Isn't it obvious they just don't
25 rely on the contractor's trucks? Obviously, somebody

1 2 ewsr

2 else is trucking the stuff up there and delivering it.

3 The point is it doesn't seem very reasonable
4 that if Mr. Daley really wanted to pay for this driveway,
5 if he really wanted to do it the way it ought to be
6 done it is perfectly obvious he could have done it that
7 way, and it is perfectly obvious from what happened in
8 this case that he didn't want to do it that way. He
9 wanted to get it for free, and that's exactly what
10 happened.

11 Mr. Newman complained about the fact that we
12 didn't produce Mr. Alecca again. Obviously, the trial
13 could go on forever if we followed every little strand
14 out and called every witness who might have something
15 very minor to say about something and then if something
16 were contradicted recall that witness back again. We
17 feel fundamentally that Mr. Alecca's story has been
18 made clear to you, and fundamentally on the important
19 points we submit to you that Mr. Alecca's statement
20 has really not been seriously impaired by the evidence
21 that you have received in this case.

22 Mr. Newman suggested to you that we were
23 contending that it was wholly inconceivable that Mr.
24 Alecca would want to steal anything. Well, we are
25 not saying that at all. We are not saying that Mr.

1 3 ewsr

2 Alecca is any angel in this situation and, as I said
3 earlier, if he was taking things from people, that doesn't
4 make the situation any better. In fact, in some ways it
5 makes it even worse, but that doesn't affect your
6 judgment in this case.

7 The fundamental point, though, the fundamental
8 point on that cash payment that Mr. Newman never
9 really came to grips with is this, and that is if Mr.
10 Alecca is the crafty thief, that Mr. Newman claims he
11 is would put himself in the position of pocketing all that
12 money in 1971 and leaving fifteen truck drivers around
13 who could go back and tell Mr. Daley about it and blow
14 the whistle on him. It just doesn't make sense, ladies
15 and gentlemen, and consider all of his argument.

16 Mr. Newman never explained to you how it did
17 make any sense, and the Government submits there is a
18 reason why. The reason why is because the \$750 to \$800
19 was never paid. That's the reason why, and that's the
20 conclusion that you should come to in this case.

21 Mr. Newman said that we are trying to estab-
22 lish a lot here by surmise and hinting and all of that
23 sort of thing. Well, it is true we are asking you to
24 draw inferences based on your own common sense, that's
25 right. That's what we are asking you to do. I will give

1 4 ewsr

2 you an example. I said in some way Mr. Daley got back
3 up to that house. That's right. I said "In some way"
4 because we didn't have a policeman standing on the
5 corner who saw him drive in, but we had witnesses who
6 saw him leave, we had witnesses who saw him there the
7 next day, and the normal human activity is to figure
8 out that when he is back there the next day, that means
9 in some way he got back there, isn't that right?

10 We are asking you to do that same kind of
11 thinking, ladies and gentlemen, that same kind of thinking
12 that you don't leave outside the courthouse. You are
13 allowed to think in this case, and you know that when
14 somebody sees him back up there, that means he must have
15 gotten up there in some way. Also, you know that it is
16 not logically impossible that he could have gotten back
17 up to Windham on the night of September 4th without
18 any of the truck drivers seeing him.

19 You saw the map in evidence that showed a number
20 of ways. You heard Mr. Kozlowski and the other men say
21 that after they left Windham they were out fixing a truck
22 on Route 28 or something. At that point they hadn't
23 discovered this other way of coming up Route 32 and over
24 across 23. You know very well that if, after they left
25 that night, Mr. Daley wanted to come back up there,

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1 certainly he could have done that, and it is not logically
2 impossible at all.

3
4 In addition, you know, ladies and gentlemen,
5 that some way Clausi had to learn that they needed more
6 stone up there. He wasn't the one that was fixing up
7 the driveway. He wasn't the one deciding where it was
8 going to go. Somebody had to tell him that, and Alecca
9 was in the hospital at this point and didn't see the
10 situation. We said in some way Clausi had to learn
11 that. That's right, "In some way" he did. You can
12 understand that, you can figure that out for yourselves.
13 What's the way he learned it? The evidence points in this
14 case to corroborating what Mr. Clausi said, he learned
15 it in a phone call from the man who wanted the driveway,
16 from the man who could understand, who had the desire
17 to get that driveway and knew exactly where he wanted
18 that circular driveway to go around the swimming pool.

19 You are allowed to think that way, ladies
20 and gentlemen, and don't be pushed out of this thing
21 by having somebody stand up here and call it surmise and
22 hinting an innuendo or anything like that. That's
23 evidence and it is drawing inferences from the evidence
24 based on your own common sense and your knowledge of
25 how the world really operates. We are not going to be

1 6 ewsr

2 able to screw off the heads of any of these people and
3 let you look inside and see whether the word "fear" is
4 written in their. We can't do that. It is something
5 that's intangible. It is not green, yellow or white.
6 You have to use your heads, your own heads to figure
7 it out. That's how you come to the conclusions like
8 this and you use your common sense, and no amount of
9 argument by Mr. Newman should push you out of using your
10 own common sense because that's what juries are supposed
11 to do, ladies and gentlemen.

12 All right, Mr. Newman talked at length about
13 the fact that Mr. Alecca had been to the FBI a number
14 of times and as in a number of other cases he pointed
15 out where, for example, Mr. Alecca started out saying
16 it had only been once, and then he admitted later on
17 he had been a number of times within a relatively short
18 period of time. That's the type of thing that he does
19 and, yes, that the Government submits to you is the
20 kind of thing that someone could make an honest mistake
21 about, first of all, and secondly, it is not really a
22 fundamental issue in the case.

23 Are you being asked to decide how many times
24 Mr. Alecca went to the FBI, or are you being asked to
25 decide how come that driveway was put there, who paid

1 7 ewsr

2 for it, who put it up there and why did they put it up
3 there. That's what you are being asked to decide. Keep
4 your eye on the ball.

5 With respect to Mr. Alecca, keep in mind the
6 fact that when he is supposed to be stealing, as they
7 are telling us, leaving 15 witnesses around, that's back
8 in 1971 when he is tight with the union, he is still
9 in there, he is still in a good situation, but when he is
10 going to the FBI it is 1973, and that's a different time
11 situation, and there are a lot of things that have inter-
12 vened at that point.

13 Mr. Newman also makes a great deal out of the
14 fact, he says, "Well, Mr.--" he says that "isn't it
15 reasonable to believe that Alecca would not tell Daley
16 where the stone was coming from"?

17 Well, here again you have to look at the
18 people's ability to think. Yes, it is possible that he
19 didn't tell Mr. Daley where the stone was coming from,
20 although he testified he did. He couldn't say exactly
21 when and where.

22 We think that's entirely reasonable because
23 he said he met with the man every day constantly.
24 Isn't it normal that he won't know exactly when he told
25 them and where he told them, but he did say "Yes, I

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know that I did tell him."

All right, let's assume you reject that for a moment. Let's assume you go along with Mr. Newman, and I say he didn't really tell him. All right, ladies and gentlemen, Mr. Daley is in the construction -- he has been in construction, he is the head of the Teamsters Union and all of a sudden his old buddy comes trucking up the mountain with thirty loads on ten-wheel dump trucks of all of this stone.

1 gwsr

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2 Now, aren't we allowed to come to the con-
3 clusion that an ordinary high level executive type
4 person, be he the head of a union, the head of a company
5 or anything else, would say to himself "Where is this
6 coming from" and look at the fact that the man or people
7 who are putting it there are members of his union and
8 figure it is coming out from employers? He is not
9 going to think Tony Alecca has his own contractor back
10 there, he is not going to be thinking that Tony Alecca
11 who has the ravine and is trying to get fill for himself
12 is digging into the ravine to get that stuff for him.
13 Isn't it obvious from the beginning of the trial that the
14 stuff is coming from employers? That is who it is
15 coming from. It is perfectly apparent, it was apparent
16 to Mr. Daley and we submit that the fact of whether or
17 not Mr. Alecca happened to tell him about it is really
18 not a major thing for you to focus on.

19 We told you that this material was furnished
20 out of fear, and we had a brand new suggestion in Mr.
21 Newman's closing statement. He said no, perhaps it
22 was furnished as a result of Clausi's ego.

23 Well, Mr. Clausi may be a fairly egotistical
24 fellow. That is conceivable. Mr. Clausi did not do all
25 the delivering all by himself. He didn't own the stone,

1 2 gwsr

2 he didn't own the timbers, he didn't own all the ten-wheel
3 dump trucks, and he didn't drive all the ten-wheel dump
4 trucks. So maybe it is true since people thought Mr.
5 Clausi was a clown and maybe it is true since people
6 didn't believe him about some things, but you can bet
7 your bottom dollar they believed him about one thing, and
8 that's if you don't drive those trucks up there you are
9 going to have problems," because he produced the drivers,
10 he produced the trucks and he produced the stone. They
11 believed him on that. That is something to keep in
12 mind when you hear somebody throwing out from the witness
13 stand that the fellow was a clown and what they meant
14 by that.

15 Mr. Newman said isn't it possible Mr. Daley
16 had 25 friends in the union, considering it has 8,000
17 members.

18 Now, we are not denying he might have 8,000
19 friends.

20 On the other hand, isn't it extraordinarily
21 significant that when Clausi and Alecca are out scouting
22 up drivers they get 25 takers out of the first 30 that
23 they had asked? Doesn't that suggest to you that it's
24 exactly what we have been talking about all along that
25 is operating here? It is leverage, ladies and gentlemen,

3 gwsr

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2 It is concern for their own welfare. That's why these
3 people are furnishing this material. And the fellows
4 that are driving those dump trucks are not including
5 Chester Davis, Ray Ebert and all the other buddies that
6 Mr. Daley has been helping on their homes. They are
7 not responding from a personal phone call from Ted,
8 "Hey, fellows, how about coming up to my house and you
9 can deliver the material and we will have a cook-out and
10 have a lot of fun."

11 They are not responding to that. They are
12 responding to the military chain of command. That is
13 shown from this evidence.

14 There was a lot of talk about Mr. Alecca
15 getting materials. I told you earlier you shouldn't
16 be drawn off on whether Mr. Alecca was getting materials
17 himself, but I think it is important to point out that
18 the main testimony or some of the significant testimony
19 that Mr. Newman relied on has to be fleshed out a little
20 bit. He said Mr. Williams said that he had delivered
21 30 or 40 loads and Mrs. Alecca would have to have a
22 real big kitchen there to keep feeding all those people.

23 You remember what Mr. Williams' testimony was?
24 His testimony was that those loads were from the Callanan
25 job where the Callanan Company, as part of its corporate

4 gwsr

responsibility, had to get rid of fill material, and he, Williams, was being paid to take those loads. Those were not the gratis loads from Naccarato. Those were the loads Williams was delivering as part of his job. So he was getting paid for that and there was nothing at all improper about that, although Mr. Newman might attempt to suggest to you that there was, and if you have any doubt about it, I suggest that you ask to have Mr. Williams testimony read back.

Mr. Newman also suggested, "Well, maybe these fellows weren't really responding to the Daley name."

The point is they were responding to the situation which included Daley's name, Alecca's name and Clausi's name, which had all the bases covered and Mr. Daley knew it. It doesn't make any difference whether they mentioned Daley or didn't mention Daley. The significance is it was a coercive situation and Daley knew that.

Secondly, he says, Mr. Newman says, "Maybe there really weren't any threats."

I think I tried to make it clear from the outset, I don't know if I am repeating myself, I apologize. the Government is not really contending that the

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significance of this case relies on any threats. You can throw out all the threats. The physical coercive situation is totally obvious. They didn't need to have any threats. They didn't need to have a question and answer trial on what's going to happen if I don't go along, and that is why 25 out of the first 30 fellows said they would go along.

Mr. Newman notes the fact that Bockelmann was called by Kozlowski, but he doesn't go on to point out that Kozlowski in turn was acting at the bidding of Clausi, and Kozlowski was not telling Bockelmann, "Hey, old buddy, how about hauling up a load just for old times sake", he was telling him that the word has come that "We are going to go haul," and the Government submits to you that you should keep that in mind.

Mr. Newman tells you that the Hudson Cement Company was relying on some kind of "community gesture." And there was that testimony. I think that testimony in context as you should look at it is that while Mr. Greene was saying on other occasions they had engaged in certain community gestures, that's true, but let's look at this situation. Was it a community gesture? Were they giving it to the church? Were they giving it to the school? Were they giving it to the fire

1 6 gwsr

2 department? They weren't, were they, ladies and
3 gentlemen? And if you went up and said, "How about
4 six hundred tons of crushed stone for my driveway
5 because I am a community gesture," do you think you'd
6 get it? You get you wouldn't get it, ladies and
7 gentlemen. What was this? This wasn't a community
8 gesture. This was a union gesture, and that's exactly
9 what those employers thought, that is what they testified
10 to, and we would submit that you may well find that perhaps
11 the facts were even stronger than what they testified
12 to when you apply your common sense to it. They may
13 not want to come in right now and say the full extent of
14 what they were feeling at the time, but just again, it
15 is actions speak louder than words. They were asked
16 and they produced it. And you can't see any or reasonable
17 explanation for doing it other than the physical facts
18 of the situation.

19 Now, let's look at the question of credibility
20 of witnesses. You know, the Government didn't choose
21 these witnesses. We didn't go out to Mr. Clausi and
22 Mr. Kozlowski and Mr. Alecca and all of these drivers
23 and say, "We think it would be really great if you
24 fellows came in to testify."
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2 Who chose them? Mr. Daley chose those wit-
3 nesses because he chose those people to put in his driveway.
4 Think about that for a minute.

5 The Government is stuck with those witnesses
6 because they were the ones that were there. We can't
7 go remake Mr. Clausi into a more dignified type of fellow
8 that you might find more personally appealing.

9 And now that they have had a falling out and
10 we are in court, now Mr. Newman tells you to reject their
11 testimony. But I think it is important to recognize
12 that in order to accept the statement of Mr. Daley you have
13 to reject an awful lot of testimony, you have to come
14 to the conclusion that so many people are out to deceive
15 you, so many people feel so strongly about Mr. Daley
16 that they are just out to get him.

17 Mr. Alecca, Mr. Clausi, Mr. Bockelmann, Forte,
18 even little Gus DiMeo, the guy who isn't in the Teamsters
19 Union, Newman tells you is testifying falsely, Kozlowski,
20 and I gathered he was saying Mr. Jaffe's testimony was not
21 entirely accurate either.

22 Throw out all of that testimony, conclude every-
23 body is lying but believe Mr. Daley, believe Mr. Spada.
24 We would submit to you that perhaps the scale should
25 be alanced in the other direction and you should recognize

1 gwb-2

2 where the real interest here is and the real interest
3 is in favor of accepting the fundamental kernel of the
4 Government's evidence of what happened on this driveway
5 and rejecting in substance a large amount of Mr. Daley's
6 explanation.

7 Mr. Newman had an interesting concept. He
8 said that if Mr. Davis wanted to lie for Mr. Daley he could
9 have done a better job of it. Well, there is no doubt
10 that that is true.

11 On the other hand, we would submit that when
12 you look at Mr. Davis' testimony, what happened really
13 was he just couldn't quite cough it up. He couldn't just
14 quite come in here and say "Yes, I saw that payment."

15 He couldn't bring himself to do that. Maybe
16 that is some kind of a credit to Mr. Davis. He got up
17 to the brink, he was close, but he just didn't want to
18 jump in.

19 If you are really looking at people who are
20 vindictive, who are out to get somebody, who are coming
21 in to court to lie and do it and to make up a good
22 story, couldn't Alecca and Clausi have done a great job?
23 Couldn't they have come in and said, "Ted got on the phone
24 and he said, 'let me know if anybody doesn't cooperate and
25 we'll fix them. Keep a list of who helps with the drives.

1 gwb-3

2 let me know what employers are helping out. By the
3 way, Tony, don't we have some negotiations going on over
4 there with Hudson Cement?"

5 Which was true, as you recall from the testi-
6 mony, at that time.

7 Wouldn't that testimony have sounded terrific?
8 Why does Clausi have to come in and say it was dirty
9 stone. Couldn't he come in and say it was great stone,
10 super polished stone, really terrific?

11 Wouldn't Alecca come in and say, "We have been
12 doing this back in the union all the time and Ted had been
13 telling me this and that."

14 Remember, these guys were like this in '71.
15 If Mr. Alecca wanted to make it up, if he wanted to go that
16 far, think of all the things he could have come in and
17 told us about Mr. Daley. But they didn't do it. They
18 didn't come in that way.

19 Also, by the way, just recognize the fact
20 that it seemed to come out through the trial that Kozlowski
21 and Clausi don't get along together. Can you picture
22 them sitting down together to make up a story? It
23 doesn't work out very well, does it, ladies and gentlemen?
24 We would submit to you what happened here was these
25 witnesses, who are not professional witnesses, they are

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2 not used to keeping track of things like this, they
3 came in and they told you what they recall. Some of it
4 was different from what other fellows recalled. Some of
5 it was slightly different in one way or another from what
6 they said at a prior time, but fundamentally it was sub-
7 stantially accurate.

8 Look at the facts you have to go on. Not
9 whether you are going to give Clausi or Alecca an A or
10 B for their performance on the witness stand, but the
11 fundamental facts of what happened, did the driveway go up
12 there, what kind of a driveway was it, and why did it get
13 up there and how much did it take to put it together.

14 When you look at that all of the evidence fits
15 together in a very cohesive ball.

16 Mr. Newman tried his best to salvage Mr.
17 Spada. If you ever start to think you might want to
18 believe Mr. Spada we suggest you just reread his cross-
19 examination and you will see how sure he was that that
20 couldn't possibly have been 1-A stone, and it wasn't Mr.
21 Jaffe that put the words in his mouth about it being 1-A
22 stone, he came right out in the grand jury and said it
23 was 1-A stone.

24 That was Mr. Spada.. And did you hear anything
25 about Mr. Jaffe forcing him to testify to anything? He

1 gwb-5

2 put the question to him, was it 1-A stone -- was it stone?
3 The man always had the opportunity to say no. Did Mr.
4 Spada on the witness stand seem to be a quicering little
5 fellow who didn't have the nerve to say no? Of course
6 he didn't. He recognized the side his bread is buttered
7 on, ladies and gentlemen. It makes you a little bit of
8 money to be friends with Ted Daley, and it hurts to be
9 against Ted Daley.

10 Fundamentally probably the biggest mistake
11 that was made in this defense case was for Ted Daley to get on
12 the witness stand. The Government submits to you
13 that if you didn't have anything before he got on and you
14 were just asked to believe his story, the Government submits
15 that you would have found it unacceptable.

16 When this man, the high position that he is in,
17 gets up there and he tells you in effect he didn't know
18 anything, he didn't understand anything and nobody told
19 him anything, and he didn't ask for the driveway and he
20 didn't know what was on the driveway and he didn't talk
21 to anybody after the driveway but he just remembered pay ing
22 that money and then he can't really explain in a candid
23 way even this payback in the trusteeship situation,
24 the Government submits to you that you know that he is
25 not being entirely candid, and you ask yourselves why does

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2 a man come into court and not be entirely candid and
3 truthful, why doesn't he open up the way Mr. Newman sug-
4 gests he might have.

5 The reason is because he knows that there is
6 guilt there. He knows that fundamentally he cannot tell
7 you all of the true facts because if he did tell you all
8 of the true facts it would amount to doing nothing more
9 than confessing to you that he did wrong.

10 Ladies and gentlemen, Mr. Newman did say
11 one thing that I wanted to agree with, and that is that
12 there is nothing wrong with being a chief, there is nothing
13 wrong with being the head of the union, and the Government
14 has never attempted to suggest to you that there is any-
15 thing wrong with that, and I hope you didn't get that
16 impression, but it is a fundamental fact in the case that
17 you have to recognize Mr. Daley is the head and what we are
18 saying is that when you recognize that he is the head of
19 the union, you have to hold him responsible for that,
20 you have to look at all of this material about Mr. Newman
21 telling you that Mr. Daley was such a great labor man.

22 Well, this activity that he engaged in in this
23 case is fundamentally anti-labor, because he took from
24 those men the only thing that they had, which is their
25 time, which is their labor, which is what he is supposed

1 gwb-7

2 to be protecting. That is why he is up there, to protect
3 that time and that labor. But he just took it for himself
4 and he didn't pay them for it. So don't let the fact
5 that he is a great man interfere with your coming to your
6 own judgment one way or another as to how this case should
7 be resolved.

8 The Government, as we come down to the end
9 of it, asks you to do one thing in this case, just one
10 thing. When it is all cleared away, we ask you to hold
11 Mr. Daley responsible for what he did and hold him respons-
12 ible for what he knew and hold him responsible for what he
13 took.

14 The Government asks you for nothing more.

15 THE COURT: Ladies and gentlemen, everybody
16 has kept at least our last promise to you. It is past
17 7:00. I will see you in this courtroom at 9:30 tomorrow
18 morning.

19 Have a good night's sleep.

20 (Adjourned to Thursday, March 10, 1977,
21 at 9:30 A.M.)
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CHARGE OF THE COURT

(Lasker, J.)

Ladies and gentlemen of the jury:

Now that you have heard the testimony and the arguments of counsel, the time has come to instruct you as to the law governing the case. You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment on your determination of the facts, and I stress the words "your determination" to decide, under the law as I shall instruct you, whether the Government has or has not proven the charges of the indictment against Mr. Daley beyond a reasonable doubt.

I will discuss those charges with you in detail, of course, in a moment. Before that, I want to give you a few important preliminary and general instructions.

First, you are to perform your duties as jurors without bias or prejudice to or for anybody, whether the Government or Mr. Daley. The law does not permit jurors and you wouldn't want it to permit jurors to be governed either by sympathy or swayed by prejudice or public opinion.

Secondly, we start with the proposition that we started with at the outset of the trial, that is that the law presumes every defendant to be innocent against

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2 every charge that is made.

3 You will recall that when you were selected I
4 specifically asked each one of you if you could enter into
5 the discharge of your duties presuming Mr. Daley to be
6 innocent until or unless proven guilty beyond a reasonable
7 doubt after your own deliberations and each of you gave me
8 the answer "yes."

9 This presumption of innocence is sufficient
10 to acquit any defendant unless and until you as jurors are
11 unanimously satisfied beyond a reasonable doubt of
12 his guilt on the particular charge from all of the evidence
13 that has been presented.

14 The burden or responsibility is on the Govern-
15 ment to prove a defendant guilty beyond a reasonable
16 doubt, and I will advise you later in the charge what
17 the elements of those offenses are.

18 Third, I want to remind you of what I mentioned
19 at the outset of the trial, that is that the existence of
20 an indictment does not constitute evidence against Mr. Daley
21 but is merely a method of bringing a charge against him.
22 The indictment in this case contains several counts, as you
23 know. Each count contains a separate offense and each
24 of the charges must be considered separately.

25 Now, I have said and counsel have said many times

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2 throughout the case, at least in their summations, that
3 the Government has assumed the burden of proving Mr.
4 Daley guilty beyond a reasonable doubt. Let me define
5 that important term for you at the outset.

6 A reasonable doubt is not a vague, speculative
7 or imaginative doubt, it is a doubt which, as the phrase
8 suggests, is based upon reason and which comes either from
9 the evidence that you have seen and hear or from the lack
10 of evidence that you feel you have not seen or heard.

11 It is a doubt which a reasonable man or woman
12 might entertain. It is a doubt -- and I think this is the
13 best definition -- which would cause reasonable men
14 and prudent women like yourselves to hesitate to act in con-
15 nection with matters of importance in your own private
16 lives. Let's say you have an important decision to make.
17 How do you go about making that decision. You think about
18 everything you know about it and you think about every-
19 thing you would want to know and having been told, and
20 you say to yourselves, do I have enough information? Do
21 I have enough dependable information so I am ready to act.
22 If you say I don't have enough, then you have a reasonable
23 doubt. If you say I do, then you may proceed.

24 A mere suspicion cannot justify conviction.
25 Suspicion is no substitute for evidence. Nor is it

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2 sufficient to convict if you find that the circumstances
3 merely render the guilt of a defendant probable. The law
4 does not deal in probabilities.

5 In saying that the Government must prove a
6 defendant guilty beyond a reasonable doubt if there is
7 to be a conviction, I do not mean to say that the Government
8 is required to prove guilt beyond all possible doubt.
9 Indeed, in human affairs it is hard to think of anything
10 we can prove beyond all possible doubt with the exception
11 of mathematical propositions. The proof must be of
12 such a convincing character that you would be willing to
13 rely and act on it in the most important decisions of
14 your own affairs.

15 The evidence in this case, as you have been
16 told a number of times, consists of the testimony of wit-
17 nesses, the exhibits which have been received in evidence
18 and facts which have been stipulated or agreed by counsel.
19 You have to decide the case based solely on the evidence,
20 but in your consideration of the evidence you are not
21 limited to what I might call a bald statement of a witness.
22 By using the word "bald" I don't mean to suggest anything
23 about the character of the testimony, but I mean that you
24 are entitled to and you are obliged to think behind the
25 mere words that were uttered. Indeed, ladies and

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2 gentlemen, in this case, as in many, there is no doubt
3 that the outcome of the case depends substantially on
4 your determination of what witnesses you believe and the
5 extent to which you believe them.

6 In deciding the many questions before you, it
7 is your job to determine the credibility or believability
8 of the witnesses who have testified here. How do you go
9 about that? Perhaps the best answer is to say that you
10 determine the truthfulness or accuracy or weight to be
11 given to a witness' testimony in the same way that you
12 determine questions in your own personal lives.

13 We are all constantly called upon from day
14 to day to determine how much confidence we place in the
15 statements that people make to us. The truthfulness or
16 dependability of a witness as that of any other person
17 can be determined by his demeanor or look, his relationship
18 to the case and to the parties, the possibility of his
19 being biased or partial or of his not being biased or
20 partial, the stake he may have in the outcome of the case,
21 the reasonableness or unreasonableness of his statements,
22 the strength or weakness of his recollection and the
23 extent to which what he has said has either been corrobor-
24 ated or contradicted by testimony of other witnesses or
25 by other evidence.

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2 Of course a witness' testimony may be impeached
3 by his own prior inconsistent statements unless there
4 is some explanation for the inconsistency. In ordinary
5 life, when you need to determine the truthfulness of a
6 person you ask yourselves, don't you, as you did here, "Did
7 he impress me?"

8 "Did his version seem straightforward and
9 candid or not?"

10 "Did he seem to be trying to hide some of the
11 facts?"

12 "Did he have any motive to testify falsely
13 or no motive?"

14 The ultimate question for you to determine
15 and to decide on in passing on the credibility of a witness
16 is whether you believe that he or she told the truth.
17 It is for the jurors alone to determine that question,
18 and in making these suggestions I have given you only
19 guidelines and am not attempting to decide the question for
20 you. If you find that any witness has wilfully testified
21 falsely as to any material that is significant or important
22 matter, you may reject the entire testimony of that witness
23 or you may accept such portion of it as you believe and
24 reject the rest.

25 A few rules of evidence apply particularly to

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2 this case or a case of this kind. In the prosecution
3 of crime, the Government is often called upon to use
4 witnesses who are accomplices in the commission of the
5 crime itself. Offenders do not publicly proclaim their
6 intentions or operate openly under normal circumstances,
7 and it often happens that only a person who was connected
8 with the offense has the evidence which is relevant to and
9 important in the case.

10 However, experience has shown that such wit-
11 nesses known as accomplice witnesses may be motivated to
12 place the blame on others than themselves.

13 Accordingly, an accomplice's testimony should
14 be carefully scrutinized and checked with the facts which
15 you find to exist in this case and against the evidence
16 which may corroborate it and then you should give the
17 testimony of such accomplice witness such value or weight
18 as you deem proper under the circumstances.

19 A similar principle applies in the case of wit-
20 nesses who testified under a grant of immunity from
21 prosecution. Although ,of course, such person is
22 competent to testify, his testimony should be examined
23 with greater care than that of an ordinary witness. You
24 should consider, and you may consider at least whether there
25 is any reason to believe that his testimony is influenced

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2 by his own interest in the case since a witness who realizes
3 that he may benefit himself by blaming another could
4 clearly have a motive to color his testimony.

5 Of course, after you scrutinize the testimony
6 of an immunized witness with care, you may give him testi-
7 mony such weight as you feel it deserves. In other words,
8 I am not suggesting that such witnesses can't testify
9 truthfully, but only pointing out to you that you should
10 scrutinize their testimony carefully before you determine
11 what weight to give it.

12 It is, of course, proper for you to consider
13 the interest that a witness has in the outcome of a case,
14 that is true whether it be a Government witness or whether
15 he is a defendant witness, as Mr. Daley himself is in this
16 case, having a very substantial stake in the outcome of
17 the case.

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19 (continued on next page.)

20 End 3A AM
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As to all such comments, I do not mean to suggest that a witness who has an interest in the outcome of the case may not be telling the truth in spite of his interest, but I do point out that you have a right and obligation to consider these facts in determining what weight to give to the testimony of the persons or types of witnesses I have described.

Two final rules as to credibility. There has been testimony here as to the good character of Mr. Daley. You should consider such evidence of character together with all other facts and evidence in this case in determining his guilt or innocence. Evidence of his good character may in itself create a reasonable doubt where without such evidence no reasonable doubt might have existed. But if, on all the evidence you are satisfied beyond a reasonable doubt that Mr. Daley is guilty of any of the charges, a showing that he previously enjoyed a reputation of good character would not justify or excuse the offense, and you may not acquit a defendant merely because you believe he is a person of good repute.

Lastly, you should know that a witness may be discredited or impeached by evidence that the general reputation of the witness for truth and veracity is bad. If you believe any witness has been impeached and thus

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2 discredited, it is your responsibility to give the testimony
3 of that witness such credibility, if any, as you think it
4 deserves.

5 I said lastly, but there is one further rule
6 with regard to witnesses that I want to bring to your
7 attention, that is this: That's the question of how many
8 witnesses should have been brought in here by either side.
9 In that regard, I am going to point out to you that where
10 a proposed witness' testimony would be merely cumulative,
11 that is, would present to you a duplication of competent
12 and credible testimony that you have already heard, no
13 inference can be drawn against a party for failure to
14 call those so-called cumulative witnesses. Ladies and
15 gentlemen, as I have said, your determination in this case
16 must be based upon the evidence. There are two types of
17 evidence which we normally speak of. I am sure you have
18 heard them referred to often. One is called direct
19 evidence. That is the evidence of an eye or ear witness.
20 "I have heard it" such a witness would say or "I have
21 seen it."

22 The other is more indirect and is generally
23 called circumstantial evidence. Circumstantial evidence
24 is defined as the proof of a chain of events or circum-
25 stances which point to the existence or non-existence of

1 facts as to which there was no eye or ear witness. The
2 law makes no distinction as to the importance or weight
3 of circumstantial as opposed to direct evidence. It
4 requires only that you, the jury, find the facts in
5 accordance with the evidence in the case, both direct
6 and circumstantial, beyond a reasonable doubt of course.
7

8 Members of the jury, both the United States
9 Attorney and Mr. Newman, Mr. Wohl and Mr. Newman, have
10 from time to time throughout the course of the trial
11 objected to the introduction of evidence and addressed
12 arguments to the bench. It is the duty of the attorneys
13 on both sides to make such objections when either of them
14 believes that the other side is proposing to put in
15 evidence or ask questions about something that is not
16 properly admissible. I want you to understand that when
17 I have sustained an objection to a question or when I
18 have overruled an objection, that does not indicate any
19 attitude of mine as to how this case should be decided.
20 What it means, and the only thing it means, is that if I
21 have sustained an objection or told you to disregard
22 information, you are to disregard the question or the
23 answer as the case may be, and where I have ruled against
24 a question, not try and figure out what a witness might
25 have answered if he had been allowed to do so. I remind

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2 you again, also, of what I think counsel on both sides
3 asked me to tell you from time to time, that it isn't
4 the questions that count but the answers which are the
5 evidence.

6 Now, ladies and gentlemen., that I have instructed
7 you as to the manner in which you should consider the
8 evidence, and since you heard long summaries of the
9 respective contentions of counsel yesterday, I will turn
10 to the substance of the charges against Mr. Daley.

11 The indictment is in seven counts. Each count
12 charges a separate offense and although there are facts
13 common to most or at least many of the counts, each count
14 must be considered separately and a verdict rendered
15 as to that count. I should say that the counts fall into
16 three categories. Count 1 is a conspiracy to commit
17 extortion. Count 2 charges actual commission of extortion.
18 Counts 3 through 7 charge violations of the Taft-Hartley
19 Labor Relations Act and I will now explain each of those
20 to you in detail.

21 Basically, Count 1 charges Mr. Daley with
22 conspiracy to violate Section 1951 of Title 18 of the
23 United States Code. Basically, it charges that Mr. Daley
24 conspired, that is agreed, with Anthony Alecca and Thomas
25 Clausi and others to wilfully and unlawfully obstruct and

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2 affect or attempt to obstruct and effect the commerce
3 by means of extorting, and extorting through the use of
4 fear and threats of economic and financial injury goods
5 and services and other things of value from members of
6 Local 445 and from employers whose employees were members
7 of Local 445. Although it is not disputed that such
8 goods and services and other things of value were pro-
9 vided with consent of these employers and employees, it
10 is charged that the consent itself was induced by fear of
11 economic or financial injury if these goods and services
12 and other things of value were not provided.

13 Count 2 charges Mr. Daley with the substantive
14 crime of extortion. I will define the elements of
15 extortion in detail later but in brief, extortion is de-
16 fined, as you probably have gathered by now, to mean
17 obtaining property with the consent of the party in
18 question, but induced by wrongful use of actual or
19 threatened force, violence or fear which includes fear
20 of financial or economic injury.

21 Counts 3 through 7 charge Mr. Daley as the
22 principal union officer of Local 445 with violating
23 various sections of Title 29 of the United States Code
24 by accepting goods and services of value from employers
25 whose employees were members of Local 445. Now, let's get

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2 back to the first one. The first count of the indictment
3 charges that Mr. Daley violated Section 1951 of Title 18
4 by conspiring with Mr. Alecca and Mr. Clausi to commit
5 the crime of extortion. The relevant portion of Section
6 1951, a law passed by Congress, reads as follows, and I
7 am now going to read from the law:

8 "Whoever in any way or degree obstructs,
9 delays or affects commerce or the movement of any article
10 or commodity in commerce by extortion, or attempts or
11 conspires so to do commits a crime." It goes on to say
12 that as used in the law, the term "extortion" means the
13 obtaining of property from another with his consent
14 induced by wrongful use of actual or threatened force,
15 violence or fear.

16 . The indictment charges that Mr. Daley con-
17 spired, as you know, with co-conspirators, and that their
18 conspiracy had as its object the crime of affecting com-
19 merce by extortion. In this case it is charged that Mr.
20 Daley extorted property in the form of crushed stone,
21 wooden beams, fuel, the services of trucks, truck
22 drivers and other things of value through the actual
23 threatened use of fear and of express and implied threats
24 of economic and financial injury to the employers and
25 employees dealing with Local 445, or I should say employees

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2 who were members of Local 445, if they did not agree to
3 the demands of Mr. Daley and the alleged co-conspirators.

4 The indictment further charged that the con-
5 spiracy used various means to carry out the conspiracy
6 which you may find spelled out in the indictment if you
7 wish to refer to it which I think had been made clear
8 to you throughout the evidence and through counsel's
9 summation yesterday.

10 Let's get down to what a conspiracy consists
11 of. I want to say first that a conspiracy to commit
12 a crime is entirely separate and distinct from the
13 so-called substantive counts charging extortion. The
14 fact, however, that the conspiracy charge is separate
15 from the substantive charge does not prevent you from
16 considering proof of actual violation as evidence that
17 a conspiracy existed.

18 Let me now define the term "conspiracy" for
19 you. A conspiracy is an agreement between two or more
20 people to violate the law. Ladies and gentlemen, I am
21 awfully concerned that our charges are too complicated
22 and that we overdo them. If you remember nothing other
23 about the charge that I am giving you, be sure that you
24 certainly do remember what I have just told you about
25 what a conspiracy is. A conspiracy is nothing more or

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less than an agreement between two or more people to violate the law. In this case, the Government contends that the purpose of the conspiracy was to interfere with commerce by extortion. Before you may find Mr. Daley guilty under the conspiracy charge, you must find that the Government has proven beyond a reasonable doubt all of the following three elements:

First, you must find the existence of the conspiracy as charged. Obviously, you can't find a defendant, Mr. Daley or anyone else, guilty of conspiring unless you find that the conspiracy which is charged actually existed. Secondly, you must find that Mr. Daley knowingly and wilfully joined that conspiracy, and third, you must find that at least one of the alleged conspirators committed at least one of the so-called overt acts set forth in the indictment and which I will tell you more about later.

Let us talk now about the first element, the existence of the conspiracy. As I have told you, conspiracy is an agreement of two or more people to violate the law. The gist of the crime is the unlawful agreement to do so. It does not matter whether the defendant ever accomplished what he wanted by his plan, although the Government claims here that Mr. Daley's

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2 alleged plan did succeed. A conspiracy need not be
3 successful in order to constitute an illegal act or
4 offense. It is the very agreement itself to violate the
5 law together with the commission of at least one overt
6 or physical act that creates the crime.

7 To establish a conspiracy, the Government is
8 not required to show that two or more people sat around
9 the table and entered into a solemn pact to violate the
10 law. It would, of course, be quite exceptional and
11 quite unusual if you could get such evidence. You may
12 find that the existence of conspiracy has been estab-
13 lished if, from proof of all the relevant facts and
14 circumstances, you find beyond a reasonable doubt that
15 at least two of the alleged co-conspirators came to a
16 common agreement to carry out the criminal acts charged
17 in the indictment.

18 [Continued on next page.]
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Express language or specific words are not required to indicate assent or attachment or agreement to a conspiracy. When people, in fact, undertake to enter into a criminal conspiracy, much is often left to the unexpressed understanding.

You must first determine, therefore, whether or not the proof establishes that the conspiracy charged in the indictment actually came into existence. It is not necessary, however, that you find that all of the co-conspirators alleged in the indictment joined in the conspiracy but obviously you must find that at least two people did or you can't have a conspiracy.

In deciding this first element, you should consider all of the evidence which has been submitted with respect to conduct, acts and declaration of each alleged conspirator, and you may make such inference as may be reasonably drawn therefrom.

Of course, proof that the conspiracy actually has been accomplished may be the most persuasive evidence that it existed.

If, upon consideration of the evidence, you find beyond a reasonable doubt that the minds of at least two of the alleged co-conspirators met in an understanding to violate the law, then the proof of the existence of

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the conspiracy is complete.

If you conclude that the conspiracy charged in the indictment existed, you must next determine whether Mr. Daley participated in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objectives. Ladies and gentlemen, mere knowledge by a defendant of the existence of a conspiracy or of the illegal acts on the part of other alleged co-conspirators or mere association with them is not sufficient in itself to establish a defendant's membership in a conspiracy.

To determine membership, you must find beyond a reasonable doubt that the defendant, in this case Mr. Daley, joined the conspiracy knowingly and participated in it intentionally, that he was aware of the purposes and objectives of the conspiracy and entered it with the specific intent of violating the law. This determination, whether Mr. Daley became a member of the conspiracy, must be based on the evidence as to Mr. Daley's action alone and not those of anyone else.

Now, to have the requisite knowledge the defendant need not have known the full extent of the conspiracy and all of its activities. Every member of the conspiracy or, rather, each member of the conspiracy may

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2 perform separate and distinct acts at different times and
3 at different places. Some conspirators may play a major
4 role in the conspiracy while others play a minor one.

5 Thus, the guilt of a conspirator is not
6 governed by whether he played a great or a small role in
7 the conspiracy. A conspirator may join the conspiracy
8 at any point during its existence and then be held
9 responsible for all that had been done before he joined
10 and all that was reasonably done by conspirators in
11 pursuance of the conspiracy afterwards and while he
12 remained a member.

13 The question is one of intent, and that is
14 one of the facts for you to decide. It concerns what was
15 in Mr. Daley's mind and the purposes which motivated
16 his course of conduct.

17 Of course, medical science has not yet devised
18 an instrument to record wilfulness or intention. Those
19 are mental processes. Often direct proof of them is not
20 available.

21 Accordingly, intent may be legally determined
22 from the acts and conduct of a person and the circum-
23 stances surrounding those acts and conduct and such
24 reasonable inferences may be drawn from the facts.

25 I dome now to the third essential element of

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2 the crime of conspiracy, that is, that an overt act to
3 bring about the object and purpose of the conspiracy must
4 have been actually committed by at least one of the co-
5 conspirators after the unlawful agreement was made.

6 An overt act is any action which is taken to
7 achieve or further the objective of the conspiracy.

8 In this case, and this is often true, none of the overt
9 acts listed in the indictment is itself illegal or
10 criminal. They read, or some of them read as follows:

11 You will have the indictment or a copy of it
12 to look at, if you wish to, while you are deliberating.

13 Some of them read as follows, for example:

14 "That in furtherance and to effect the objectives
15 of the conspiracy, the co-conspirators did the following
16 things, among others:

17 "(a) In or about June, 1971, the defendant
18 Theodore G. Daley spoke with co-conspirator Thomas Clausi
19 about obtaining wooden beams to be used at the defendant's
20 property in Windham, New York.

21 "(b) In or about the summer of 1971, the
22 defendant Theodore G. Daley spoke with co-conspirator
23 Anthony Alecca about obtaining stone to be used at the
24 defendant's property at Windham.

25 "(c) In or about August, 1971, and prior to

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2 September 4, 1971, co-conspirator Anthony Alecca spoke
3 with Robert Greene, general manager of the Hudson Cement
4 plant located in Kingston, New York, about obtaining
5 property from Hudson Cement.

6 "(d) On or about September 4, 1971, co-
7 conspirator Thomas Clausi had a conversation with Thomas
8 Turco, plant supervisor of the Hudson Cement plant, about
9 obtaining property from Hudson Cement to be given to the
10 defendant Theodore G. Daley.

11 Finally, at least finally in the one I am
12 going to read, there are others here: "On or about
13 September 4, 1971, co-conspirator Thomas Clausi spoke
14 with Robert Kozlowski and Michael Spada, Sr. about
15 obtaining trucks to be filled with stone, to be driven
16 from the Hudson Cement Company plant in Kingston, New
17 York, to a house owned by the defendant Theodore G. Daley
18 in Windham, New York."

19 Now, obviously, for persons -- okay?

20 JUROR NO. 9: I closed my eyes. Would you
21 pull down the shades?

22 THE COURT: I would feel more comfortable if
23 I see the whites of your eyes.

24 Now, obviously, for persons to have conversation
25 for example, is not criminal conduct, but when, if you

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1
2 find, as the indictment charges, the reason for those
3 conversations was for the purpose of violating the law,
4 then those conversations lack innocent character. In
5 other words, having a conversation with someone is not
6 a crime, but if you have a conversation with someone
7 in furtherance of a conspiracy, then it becomes an overt
8 act in furtherance of the conspiracy.

9 It is not necessary for the Government to
10 prove that each member of the conspiracy committed or
11 participated in a particular or any overt act, since the
12 act of any one conspirator done in furtherance of the
13 conspiracy becomes the act of all.

14 Moreover, the Government is not required to
15 prove every one of the overt acts was committed. It is
16 sufficient if it proves the commission of at least one
17 of the overt acts set forth in the indictment and that
18 it occurred at or about the time and place alleged and
19 for the purpose of furthering the conspiracy.

20 Now, ladies and gentlemen, when people enter
21 into a conspiracy to accomplish an unlawful purpose they
22 become agents for each other in carrying out the con-
23 spiracy. Hence, the acts or declarations or statements
24 of any one of the co-conspirators in the course of the
25 conspiracy and in furtherance of it are deemed to be the

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1 acts of all of them, including the defendant, and the
2 defendant, like his co-conspirators, is responsible for
3 such acts, of course only if you find beyond a reasonable
4 doubt that he knowingly became a member of the conspiracy.
5

6 To sum up, in order to prevail against Mr.
7 Daley under the conspiracy count, the Government must
8 establish beyond a reasonable doubt the existence, first,
9 of an unlawful agreement as charged in the indictment;
10 second, that Mr. Daley knowingly and wilfully became a
11 member of that conspiracy; and third, that at least one
12 overt action was taken in furtherance of the conspirator
13 by one of the alleged conspirators.

14 If the Government does present to you evidence
15 beyond a reasonable doubt of all three of those elements,
16 your verdict on Count 1 must be guilty. If the Government
17 fails, your verdict on that count must be not guilty.

18 I come now to Count 2. Mr. Daley is charged
19 in Count 2 of the indictment with a separate violation
20 of Title 18, United States Code, Section 1951, that is,
21 by committing the crime of extortion, and, in particular,
22 the obtaining of goods and services of value from employers
23 whose employees were members of and were represented by
24 Local 445 and from members of Local 445 with the consent
25 of those people but with such consent induced by fear and

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2 and threats of economic and financial injury if they
3 didn't provide such goods and services.

4 In order to find the defendant guilty of the
5 crime of extortion, the Government must prove each of
6 the following elements beyond a reasonable doubt:

7 First, that on or about the date specified by
8 reason of Mr. Daley's actions, goods or services of value
9 were obtained from employers or employees in question or
10 an attempt was made to obtain them, and that Mr. Daley
11 wilfully and knowingly induced those persons to part
12 with such property through the wrongful use of fear or
13 financial or economic injury or he caused them to be
14 induced to do these things; and second, that the extortion
15 actually or potentially in some way obstructed, delayed
16 or affected interstate commerce.

17 Now, the term "extortion" means the obtaining
18 of property from another with his consent induced by
19 wrongful use of actual or threatened force, violence or
20 fear.

21 The word "property" as used in the law includes
22 any valuable right considered as a source or element of
23 wealth. It is not limited to physical or tangible
24 property or things and it doesn't depend upon a direct
25 benefit being conferred on the person who obtains the

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2 property.

3 I charge you that labor and other goods and
4 services provided by union members and goods and other
5 materials provided by employers are included within the
6 definition of "property" within the meaning of the law.

7 As I have indicated, extortion is the obtaining
8 of property from another with his consent but induced
9 by fear, threats of force and violence are of course not
10 legitimate means for obtaining property. In order to
11 establish extortion the Government must prove that the
12 property was obtained through one of those methods.
13 It need not establish that all three of them -- fear,
14 threats and violence -- were employed. In this case,
15 the Government contends that Mr. Daley used the first
16 two means, fear and threats, but not violence, to
17 obtain his ends.

18 Therefore, I will now define the terms "fear"
19 and "threat" as used in the law.

20 "Fear" in this case means a fear of possible
21 financial injury by intexence with the daily functioning
22 of business or the loss of work. You may find that the
23 Government has proven the element of fear if the
24 evidence shows to your satisfaction beyond a reasonable
25 doubt a state of anxiety, concern or apprehension of

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2 anticipated harm or loss to business or to financial or
3 job security.

4 However, I caution you that fear is a sub-
5 stantive mental state and is described in different
6 ways by different people, and you must determine from the
7 facts and circumstances as shown by the evidence whether
8 there was fear on the part of the alleged victims in
9 this case.

10 As you know, the Government contends that a
11 number of persons provided goods and services to Mr. Daley
12 out of fear of economic and financial harm.

13 The Government need not show fear on the part
14 of all the victims but only on the part of one or more.
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It is not necessary that this fear be a consequence of a direct threat; it is sufficient that the surrounding circumstances render the alleged victim's fear reasonable; but you must find that a reasonable man would have been fearful in the circumstances.

The reasonableness of the fear may be shown by direct or by circumstantial evidence.

Ladies and gentlemen, would you like me to take a five-minute break in this reading?

THE JURORS: No.

THE COURT: I am more than halfway concluded.

I will repeat my last sentence. I wasn't referring to anybody in particular.

The reasonableness of the fear may be shown by direct or circumstantial evidence.

Direct evidence of fear includes the testimony of the various employees' and employers' fears of economic injury or the absence of such fear. Some said they were fearful and some said they weren't. This testimony was admitted solely for the purpose of showing the state of mind of the party or parties speaking with reference to why goods, services or other things of value were provided.

If you find this testimony did show a state of mind, then you may consider it for that purpose only and

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for no other purpose.

Fear of economic or financial injury may be found to be reasonable if, considering the demands for materials and services, the persons who made them, the persons for whom they were made, the veiled nature of the threats involved and the situation in which they were made a reasonable person would get the message clearly.

Finally, I instruct you that fear may be present even if confrontations between the alleged victim and the alleged extorter appear friendly.

In summary, the Government must establish beyond a reasonable doubt that fear was created in the victim's mind, such fear was a reasonable one, and the defendant knowingly and intentionally, making use of that fear, extorted goods, services or other property .

Now let me turn for a moment to the concept of threat, the other means by which the Government contends extortion was carried out.

Threats of force need not be to the personal safety of the victim. They may be threats of economic and financial injury. For example, they may be threats of force by labor disruptions to employers with ensuing economic loss or by failure to provide work for particular employees who are union members.

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2 Threats need not be direct threats but may
3 be veiled threats made by suggestion, implication and in-
4 ference, though such inference on the part of the person
5 extorted must be reasonable. Whether veiled reference
6 amounted to threats of force is a matter for you to
7 decide under all the circumstances.

8 The Government is not obligated to show
9 Mr. Daley communicated any threats directly to members of
10 Local 445 or the employers involved -- if you find that
11 any such threats were made. If you find that others made
12 such threats, however, and made them as a co-conspirator
13 with him, then Mr. Daley would be responsible for the
14 threats of such people working in his behalf.

15 The second elements of the crime of extortion
16 with which Mr. Daley is charged requires that interstate
17 commerce be affected in some way. In this connection,
18 I instruct you that the statutory language specifically
19 forbids extortion which in any way or degree obstructs inter-
20 state commerce. Such extortion need affect interstate
21 commerce only in a minimal degree to constitute a violation.

22 The statute is not limited to conduct that
23 directly and immediately obstructs movement of goods, nor
24 is it necessary that commerce actually be affected by a
25 defendant's conduct. It is sufficient if the extortion

gwb-4

potentially affects commerce.

Furthermore, it is not necessary for you to find that the defendant considered that the effect of his acts would be to affect interstate commerce or that he had a purpose to affect interstate commerce. All that is necessary is that the natural effect of the acts committed was either actually or potentially to affect interstate commerce.

If you believe the Government's witnesses and evidence regarding interstate commerce that has been put before you beyond a reasonable doubt, then I charge you that as a matter of law there was an effect on interstate commerce and the necessary Federal jurisdictional element is satisfied.

Ladies and gentlemen, there is another basis upon which you may find a defendant, in this case Mr. Daley, guilty of the substantive count in Count 2, even though he didnot literally commit the act himself.

This alternative basis is as follows: If you find beyond a reasonable doubt that the substantive offense of extortion was committed by one or more members of the conspiracy and that the acts which constituted the offense were done in furtherance of the conspiracy of which Mr. Daley was a member and that Mr. Daley might reasonably have

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2 foreseen that those acts would be done, then you may find
3 that Mr. Daley is guilty of the offense of extortion alleged
4 in Count 2 even though he did not personally otherwise
5 participate in the acts constituting those offenses or have
6 knowledge of them.

7 Finally, as noted above, the law specifically
8 prohibits an attempt to violate its provisions, and,
9 therefore, in order for you to find the defendant guilty
10 it need not be shown that goods, services or other property
11 were actually provided, although the Government of course
12 contends that they were.

13 This rule applies particularly to any employer
14 or employee who the evidence shows did not agree to the
15 demand of the defendant, although the Government claims
16 that they were approached by the defendant or his co-
17 conspirators and tactics similar to those used against
18 other employers and employees that acceded to the demands were
19 used as to them.

20 I come now, ladies and gentlemen, to the last
21 group of counts, Counts 3 through 7. Those counts
22 charge separate violations of the Federal Labor Management
23 Relations Law, also known, and you may have heard it, as the
24 Taft-Hartley Law, and are based on alleged receipt of
25 goods, services and other things of value by Mr. Daley from

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2 the employers listed in those counts. Those counts
3 deal only with employers and not with employees. Each of
4 the counts charges a separate offense and each must be
5 considered separately.

6 The statute or Act of Congress which Mr. Daley
7 is charged with violating in those counts makes it unlawful
8 for any employer or any person who acts in the interest
9 of an employer to deliver, pay or lend anything of value
10 to any representative of his employees in an industry
11 affecting commerce or to the officer of any union which
12 represents these employees and makes it unlawful for any
13 person, including an officer of the union, to demand or
14 accept any such thing of value. In other words, the
15 employer, the boss, is forbidden to give anything of value
16 or lend it to a labor union official, and a labor union
17 official is forbidden to accept it.

18 The law provides that any persons who wilfully
19 violates any of the provisions of this section are guilty
20 of a crime.

21 This statute outlaws all requests and accept-
22 ances of things of value, with exceptions not relevant
23 here, between employers and union representatives.

24 With respect to each of the Counts 3 through 7,
25 in order to convict Mr. Daley, you must find that the

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2 Government has proven beyond a reasonable doubt as to
3 that particular count all of the following four elements.

4 First: That on or about the date alleged,
5 Mr.Daley was a representative of employees or an officer
6 of a labor organization;

7 Second: That on or about the date alleged,
8 Mr.Daley wilfully requested,demanded, received or accepted
9 delivery of any of the goods, services and other things
10 specified in the count that you are considering, either
11 directly or indirectly, from the employer named in the count,
12 and that those goods or things were of value;

13 Third: That the employer who allegedly paid
14 or delivered the goods or services to Mr. Daley employed
15 Local 445 people, that is, persons who were members of
16 the union of which Mr. Daley was an officer;

17 Fourth: -- I should have said five elements
18 rather than four -- Fourth: That Mr.Daley knew that the
19 materials or services were coming from such an employer,
20 although he need not have known the identity of the em-
21 ployer, and that the materials, as I have said, had some
22 value, although he need not have known of their precise
23 value;

24 Finally, that the employer was in an industry
25 affecting interstate commerce.

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2 Now, if you find beyond a reasonable doubt
3 that any of the goods, services or other things of value
4 specified in the count you are considering were requested,
5 demanded, received or accepted by Mr. Daley, then you
6 may find that this element, that is, the first element
7 of the crime, has been proven.

8 In this regard, I charge you that the law, as I
9 think I said before, prohibits union officers from request-
10 ing or accepting gifts of any value from employers. It
11 is immaterial what the value of the goods or services is
12 if they have a value, but, of course, the Government must
13 establish that they have some value.

14 In order to find an offense has been committed
15 on each of Counts 3 through 7, you must find that the
16 employer named in that count employed members of Local 445.

17 Finally, as to the fact that Mr. Daley should
18 have known that an employer was providing these goods
19 or services and that they had value, I will explain to
20 you the general considerations with respect to the elements
21 of knowledge and wilfulness as to that element, along
22 with my discussion of it as to all the offenses specified
23 in the indictment.

24 With regard to the requirement that the
25 Government prove that the employers were in an industry

1 gwb-9

2 affecting interstate commerce, if you believe the testi-
3 mony that the trucking business and the building and
4 construction industry as reflected in the activities of
5 the employers specified in Counts 3 through 7 involved
6 doing business between New York and other States, the use
7 of materials and goods transported to or from other States
8 and work on interstate roads, then as a matter of law
9 the Government has satisfied its burden of proof that the
10 trucking business and the building and construction industry
11 are industries affecting commerce.

12 Now, ladies and gentlemen, I come to a very
13 important part of the instructions, but you will be glad
14 to know they are also near the end. That is, with regard
15 to every offense charged in the indictment and with
16 regard -- well, enough said -- with regard to every offense
17 charged in the indictment, the Government must satisfy
18 you beyond a reasonable doubt that Mr. Daley's actions,
19 whatever you find them to be, were knowing and wilful.
20 No person in our system of justice can be convicted of a
21 crime unless he knew what he was doing and he meant to
22 do it.

23 Now, I am going to read you perhaps at some
24 length some instructions on that, but I don't know if I can
25 put it any better than I just did to you now. So you

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2 must determine that whatever Mr. Daley you find that he
3 did, he did knowing what he was doing and intending to do
4 what he is charged with doing.

5 An act is done knowingly if it is done volun-
6 tarily and purposely and not because of any mistake,
7 accident, negligence or any innocent reason. An act is
8 wilful if it is done knowingly, deliberately and with
9 a bad motive or purpose.

10 In determining whether a defendant, Mr. Daley
11 or otherwise, has acted knowingly and wilfully, it is not
12 necessary for the Government to establish that the defend-
13 ant knew that he was breaking any particular law or any
14 particular rule. Knowledge and wilfulness of a defendant
15 normally cannot be proven by direct evidence either. Like
16 any other fact in issue it may be established by cir-
17 cumstantial evidence.

18 It is obviously impossible to ascertain or
19 prove directly the operation of a defendant's mind, but proof
20 of the circumstances surrounding the transactions may well
21 supply an adequate and convincing basis for a finding
22 that a defendant acted wilfully or not wilfully or they
23 may prove that he acted knowingly or not knowingly.

24
25 (continued on next page.)

End 4B AM

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2 The actions of a man must be set in a time
3 and place, just as the full meaning of a word is commonly
4 understood only in its relation to the other words in
5 a sentence or its content so the meaning of a particular
6 act or conduct may depend on the circumstances,
7 and it usually does, surrounding it.

8 With respect to the conspiracy and extortion
9 counts, you may find that Mr. Daley acted wilfully and
10 knowingly if you find that the Government has established
11 beyond a reasonable doubt that he expected or contemplated
12 that the other alleged members of the conspiracy would
13 transmit his demands to some other persons subject to
14 being induced to part with their goods or services by means
15 of fear or threats of economic or financial injury.

16 You need not find, however, that Mr. Daley knew
17 or learned of the identity of the victims or of the precise
18 arrangements of costs involved.

19 In addition, the element of knowledge may be
20 satisfied by inferences of knowledge to be drawn from proof
21 that a defendant deliberately closed his eyes to what
22 otherwise would have been obvious to him.

23 No person can disclaim knowledge merely by
24 closing his eyes intentionally to facts which would
25 otherwise have been obvious to him. If you find from all

ewb-2

1 the evidence beyond a reasonable doubt that Mr. Daley
2 had a conscious purpose to avoid learning how and from
3 whom the goods and services were obtained, you may
4 infer that he had knowledge of these matters.
5

6 A finding beyond a reasonable doubt of a con-
7 scious purpose to avoid enlightenment will justify an
8 inference charging the defendant with such knowledge, but
9 but, of course, you would have in those circumstances to
10 find that Mr. Daley consciously and deliberately tried to avoid
11 finding out what happened.

12 The same principle applies to Counts 3 through
13 7.

14 To convict, you need not find that the defendant
15 knew or learned of the identity of the employers from
16 whom the Government contends he received or accepted goods
17 and services, nor do you need to find that the defendant knew
18 the precise materials or costs thereof transmitted to
19 him, but that he did what he did knowingly and on purpose
20 and wilfully, you must find, of course, as to every single
21 offense charged here.

22 You have heard testimony by several witnesses
23 concerning a conversation between Mr. Daley and Mr. Alecca
24 at the union office in September of 1971, where it is
25 contended that Mr. Daley indicated his intention to give

1 ewb-3

2 Mr. Alecca money to be distributed among the men who drove
3 machinery and equipment to the Windham property.

4 It is further contended that Mr. Daley gave
5 Mr. Alecca approximately \$600 in cash on that occasion of
6 his payment.

7 Should you find that Mr. Daley did not intend
8 to accept the services of the drivers and related expenses
9 thereto as a gift, but rather that he did intend to pay
10 for them and he did pay Alecca for them, you may consider
11 this evidence in connection with deciding whether Mr.
12 Daly violated Section 186.

13 Ladies and gentlemen, I have come nearly to
14 the end of my formal instructions, but in a sense the
15 most important part of what I have to say is coming now.

16 Excuse me, ladies and gentlemen, there is one
17 other charge that I wanted to give to you before I reached
18 the point of which I was speaking. That is, in determining
19 whether Mr. Daley acted knowingly and willingly, you may
20 consider any motive or lack of motive on his part. Did
21 he have a pecuniary or financial interest in the outcome
22 of these transactions? How great was that interest, if
23 any? Was there a profit motive? Was there any motive?
24 What was the spring of conduct which triggered whatever
25 you find that he did?

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2 However, proof of motive is not a necessary
3 element of the crime of which a defendant is charged.
4 Proof of motive doesn't establish guilt nor does want of
5 proof of motive establish innocence. Motive has to do
6 with why a man acted the way he did, but why he did it is
7 not an element of the crime.

8 Motive, however, if you find any, may guide
9 you as to whether a man acted knowingly and intentionally,
10 and these factors are an element in the crime.

11 If the guilt of a defendant is seen beyond a
12 reasonable doubt, if it is, then it is immaterial what
13 the motive of the crime may be or whether any motive is
14 shown.

15 I resume what I had reached before now, ladies
16 and gentlemen, and say that I have come nearly to the end
17 of my instructions, but in a sense the most important part
18 is what I am about to say. That is with regard to your
19 role as jurors because it is for you and you alone to
20 decide whether Mr. Daley is guilty of any of the charges
21 against him.

22 I know you will try these issues in accordance
23 with the serious oath that you took as jurors when you
24 promised that you would well and truly try the issues
25 joined in this case, and as you may remember based solely

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2 on the evidence which you have had put before you in
3 this trial, and the instructions as to the law that I
4 have now given you, render a true and just verdict.
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6 (continued on next page.)
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2 I like that phrase, "We will and truly try the issues
3 joined in this case." It goes back a thousand years or
4 so, ladies and gentlemen, and its old-fashioned flavor
5 should mean something to you and remind you of the hundreds
6 of thousands of juries who have performed this function
7 before you and that you must a true verdict render based
8 upon the evidence and only the evidence that you have
9 heard in this court. In order for you to reach a
10 verdict of guilty or not guilty on any count as to Mr.
11 Daley, your verdict must, of course, be unanimous, that
12 is everybody must agree on that particular verdict.
13 In spite of the requirement of unanimity, however, each of
14 you must decide each count as to Mr. Daley individually
15 in accordance with your own conscience but only after
16 deliberation with your fellow jurors to determine whether
17 you believe a just verdict is being reached. You should
18 not hesitate to change your mind if you become convinced
19 that your original view of the case did not accord with
20 the facts of the law or whatever it is, but on the other
21 hand you should not change your view just for the purpose
22 of reaching a verdict as a matter of convenience.

23 I really have no reason to believe that you
24 will not be able to reach a unanimous verdict one way
25 or the other as to the matter is put before you.

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2 To sum up, if you find that there is a reasonable
3 doubt that the law has been violated as to Mr. Daley or
4 by Mr. Daley on any count, you must not hesitate for any
5 reason to acquite him on that count.

6 On the other hand, if you find that the law
7 has been violated, that is that the Government has proven
8 that matter or those elements beyond a reasonable doubt
9 as to any particular count, you must not hesitate because
10 of sympathy or any other reason to render a verdict of
11 guilty as to Mr. Daley on that count.

12 Nothing I have said in these instructions,
13 and I stress this, is intended to indicate any view of
14 mine towards how the issues put to you should be decided.

15 Ladies and gentlemen, according to custom,
16 Juror No. 1 normally acts as the foreman of the jury in
17 this court, and I am going to ask Mr. Allen to do so in
18 this case. That doesn't mean that he will have any
19 uauthority that the rest of you don't have, but simply
20 that he will assist in seeing to it that your discussions
21 and deliberations are orderly and that all communications
22 to the Court are properly made.

23 You have the right at any time, ladies and
24 gentlemen, to ask for the exhibits or any of them. You
25 have the right to have any of the testimony read to you

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1 or the tape exhibit played. You have the right to put
2 any questions that you want to the Court. If you do wish
3 to have any testimony read, Mr. Allen, or any exhibit,
4 it will be very helpful that you be as specific as possible
5 about the material that you are interested in so that
6 we can be assisted in locating the material in advance.
7 The way you get in touch with the Court will be to give
8 a note to the Marshal who will be standing outside the
9 door of the jury room. I am neither encouraging nor
10 discouraging your asking for anything, but certainly you
11 have the right to have anything you wish. It is not my
12 practice, ladies and gentlemen, to send in all the ex-
13 hibits at one time, plunking them down on the jury room
14 table and leaving them there. I think that would be
15 confusing. However, if you prefer, when you start your
16 deliberation you have all the exhibits before you, all
17 you have to do is write a note saying so. If, on the
18 other hand, you want a particular exhibit, just ask for
19 that. I will also say, because sometimes a jury asks,
20 that the Judge's charge will not be sent to you. I hope
21 it has been clear, I know it has been long and compli-
22 cated, even in my own experience it has been long and
23 complicated, but if it has not been clear then I am
24 afraid it would be less clear if I send it in to you and
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2 you all tried by yourselves to figure out what it meant.
3 If you do have any questions about what I have said in
4 my charge on what the law is, simply write me a note
5 saying you have a question, come on out and tell me what
6 your question is or specify the question in your note and
7 it will be answered.

8 Ladies and gentlemen, a couple of housekeeping
9 points and then I am going to retire to the robing room,
10 I hope, for the last time with counsel, for them to advise
11 me whether they think there is anything that ought to be
12 clarified in my charge. The housekeeping things are this,
13 that may explain why we stayed so late last night. I
14 will be commencing, this is one of the reasons, not the
15 only reason, I will be commencing another case this
16 afternoon in this courtroom. If I take -- if you should
17 call on me, and I am not suggesting you should, it isn't
18 necessary, but if you should call on me there may be
19 some time before you get a response. It will only be
20 because I am engaged in something else, but I will drop
21 that as conveniently and quickly as I can. Secondly,
22 I will arrange for the Marshal to take orders for
23 sandwiches and so forth as he did the other day so that
24 you do not have to waste time going out.

25 I have now come to the end of my charge. I

1 5 ewsr

2 will ask counsel to join me in the robing room so that
3 they can give me their views as to any clarifications.
4 I think I will ask you, Madam Clerk, if you will perhaps
5 take orders for lunch while we are conferring with
6 counsel.

7 You will stay in the jury box. One other
8 thing, ladies and gentlemen, I have also prepared a list,
9 what I call a verdict list. It simply reads Counts 1
10 through 7 on the left-hand side and gives you a place
11 to enter your verdict on the right-hand side, so when
12 you finally do get to that point you will be in a position
13 to do that. I will ask the Clerk to give Mr. Allen a
14 copy of that for use to the jury.

15 [Clerk handing copy to the Foreman.]

16 [Continued on next page.]
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[In the robing room:]

THE COURT: Mr. Newman.

MR. NEWMAN: If your Honor please, two exceptions.

I except to the way that your Honor emphasized your definition of conspiracy and said to them, in substance, that: If you remember nothing else I say remember what I said about conspiracy. I respectfully except to that, if your Honor please.

I also respectfully except to your Honor's charge on the question of interstate commerce in both situations and the way it was rendered, I respectfully submit, was a directed verdict on two elements which the Government would be required to establish, elements which I respectfully submit we contested throughout this trial.

THE COURT: I merely want to say, so there will be no question for anyone who reads this transcript, it is not a directed verdict. It is to say: If you believe what you hear, then the Government has proven its case.

MR. ADLER: There were a number of other instances. Your Honor emphasized, according to my recollection, the defendant's very substantial interest,

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2 using that language in words or substance, in testifying
3 at the trial, and did not specify or indicate that there
4 were any Government witnesses who had an interest in the
5 outcome of the case.

6 THE COURT: Yes, I did indicate Government
7 witnesses might have an interest in the outcome of the
8 case, but you are right I indicated the defendant's
9 interest is more substantial than that of other witnesses.

10 MR. ADLER: Your Honor's language was very
11 substantial interest. It had greater emphasis than
12 normally. When your Honor first referred to the 186
13 counts, Counts 3 through 7, your Honor did not indicate
14 on his first reading that the Government must prove that
15 Mr. Daley acted wilfully and knowingly in accepting the
16 goods and services in question.

17 THE COURT: Do you want me to specifically
18 point that out? It seems to me I have said a hundred
19 times that every offense must be shown to have been
20 accomplished wilfully and knowingly.

21 MR. WOHL: Which counts are these?

22 MR. ADLER: 186.

23 MR. NFWMAN: 3 through 7.

24 MR. WOHL: Put a whole additional element,
25 knowledge. Your Honor also said wilfully.

1
2 THE COURT: I am sure I did.

3 MR. ADLER: In addition, your Honor, I am
4 talking from my own recollection and notes, your Honor
5 indicated there could be a conviction on the conspiracy
6 count if the jury found that two or more people agreed.
7 Since there were two other co-conspirators who were
8 charged in the indictment, it is possible the jury
9 might have the misconception and if they found two people,
10 to wit, Mr. Alecca and Mr. Clausi, had an unlawful
11 agreement to violate the law and not Daley that nonethe-
12 less Mr. Daley would be chargeable because he was the
13 recipient of the benefits of the conspiracy.

14 THE COURT: I also charged at great length
15 one of the elements they must find is Mr. Daley wilfully
16 and knowingly became a member of the conspiracy.

17 MR. ADLER: Again to the extent I think the
18 jury may have been left with that impression, I would
19 except to it.

20 In addition, your Honor, at no point in my
21 listening to the charge did I hear your Honor indicate to
22 the jury that in finding the existence of a conspiracy
23 that they had to find the existence of a conspiracy in-
24 dependently of the declaration of the co-conspirators in
25 the course of the furtherance of the conspiracy.

1 4 gwsr

2 In addition, addressing myself to the Hobbs
3 Act count in the indictment, I believe it is Count 2,
4 your Honor used language, in words or substance, indi-
5 cating that the threats could be valid and used the lan-
6 guage which I believe the Government used in its sum-
7 mation about the people getting the message, and I
8 submit that that was language more appropriate in the
9 summation than the charge to the jury. The reference
10 was made three times during the charge.

11 THE COURT: I think it is appropriate in this
12 case.

13 MR. ADLER: I respectfully except. Following
14 up on Mr. Newman's reference to the interstate commerce
15 elements which were, as your Honor knows, vigorously
16 contested throughout the trial --

17 THE COURT: Yes.

18 MR. ADLER: -- I believe your Honor didn't
19 take into account the Court of Appeals' decision in
20 Merola at 523 Fed. 2d at Page 51, which I think emphasized
21 a greater effect upon interstate commerce than the
22 Government requested and which your Honor charged.

23 THE COURT: We have already dealt with that
24 question earlier in the case.

25 MR. ADLER: I wanted to indicate it is only to

1
2 that element indicating the potential effect on inter-
3 state commerce as opposed to the actual effect. Again,
4 it is "potential" language in the charge tends to imply
5 something of speculation as opposed to "actual." We
6 except to that because of the decision by the Court of
7 Appeals in Merola.

8 THE COURT: I may comment, without meaning to
9 give Mr. Newman a hard time, that we discussed this
10 very issue, precisely this issue, potential as opposed to
11 actual, and I asked Mr. Newman if he wanted to make any
12 further comment and he said he did not have anything
13 else to say.

14 MR. ADLER: The last area which I would like
15 to talk about is your Honor's use of the language if the
16 defendant closed his eyes to some of the actions which
17 were going on. That language about closing ones eyes,,
18 which normally has come up in a series of cases, which I
19 think the Government has properly referred to in their
20 requests to charge, frequently are involved in possession
21 of stolen property cases, and I don't think that the
22 jury was really aware, No. 1, that "closed the eyes"
23 language should be coupled with the Government's burden
24 of proving the element of guilt beyond a reasonable
25 doubt. I think this "closed the eyes" language tended to
water down the Government's burden of proof and perhaps --

gwb-1

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2 THE COURT: What would you like me to do
3 about that?

4 MR. ADLER: I think that the jury should be
5 particularly aware of the fact, and I will ask your Honor
6 to charge, that mere recklessness or negligence is not
7 sufficient to convict Mr. Daley.

8 THE COURT: I would be glad to.

9 MR. NEWMAN: Judge, did you want requests, too?
10 I have one or two. I just stuck to exceptions.

11 Your Honor, I would specifically request that
12 your Honor instruct the jury that if the Government has
13 failed to establish any one of the three elements required
14 of conspiracy, then the jury must acquit.

15 THE COURT: I am not going to do that again.
16 I said they have to find all three.

17 MR. NEWMAN: That is all the requests I have.

18 MR. WOHL: Your Honor, first off, I think
19 the record should reflect, if it may not already, that
20 the Government's requests to charge were served on the
21 defense at the very beginning of the trial and many of the
22 exceptions, particularly the ones Mr. Adler referred to,
23 were included in language the Government submitted at that
24 time, and we have had no objection up until now.

25 Secondly, we had the impression from the

gwb-2

pre-charge conference that your Honor was going to give Government's Request Number 11, which talks about the duration of the conspiracy not having to be the entire period from June 1971, to August 3, 1976. It is a technical point. Your Honor left it out. I think it should go in.

THE COURT: May I have it? I will give it back.

I will give the first two paragraphs. I am not going to go back into this business that a conspiracy once formed lasts forever.

MR. WOHL: This whole area of fear that the Government had requested in Request Number 16 and also supplemental request Number 2 was shortened.

THE COURT: Yes, it was, deliberately. I felt that the Government's proposed charge on fear was unnecessarily long and the concept is perfectly obvious to a layman once he considers the matter at all and it was very well stated by you yesterday and the jury might get the feeling the Court is hammering it home.

MR. WOHL: I appreciate that point, your Honor, but because of the various sections that were cut out, the jury was never told by your Honor that the Government need not prove that Mr. Daley created the fear.

MR. NEWMAN: You specifically said that.

gwb-3

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2 MR. WOHL: When you were talking about threat,
3 you said that the Government need not show that Mr.Daley
4 was the one who made the threat.

5 THE COURT: Mr. Wohl, I am not going to do
6 anything about it. If I admit it, I don't believe I
7 did it deliberately. So as has been said about fear
8 and the natural assumption, it seems to me when you talk
9 about someone having adduced fear and a person is on trial
10 that it is the person on trial used the fear. I sat
11 there yesterday while you properly developed this point before
12 the jury and didn't intervene, and I don't think there is
13 any reason in the world for the jury to believe -- I should
14 put it the other way around -- I have misstated what I
15 had in mind. You were talking about the opposite. You
16 were talking about the fact Mr.Daley need not have created
17 fear.

18 I have no doubt in my mind that the jury
19 thoroughly understands that Mr.Daley can be held responsible
20 for everything done by his co-conspirators and his agents.
21 The theory of this whole thing is he set this process
22 going and he is responsible for it, and it seems to me
23 that that is the co-equal of what I have stated in so many
24 words, that he didn't have to create the fear just as he
25 didn't have to make the phone calls. If he had to, he

1 gwb-4

2 wouldn't be on trial. It might put the matter altogether
3 beyond question. I think at this stage of the game
4 it unduly emphasizes the fear problem if I turn to it
5 now.

6 MR. WOHL: With respect to the emphasis, the
7 Government would strongly object to your going back to
8 the jury now and saying that as to the 186 counts the
9 Government has to prove wilfulness.

10 THE COURT: I don't expect to go back to the 186
11 counts. What I do expect to do is this, although I don't
12 think it is quite necessary -- I would like to eliminate
13 it as a source of argument at a later time -- and that is
14 to say I am sure that they understand that no person can
15 be -- Mr. Daley and no one else can be convicted for
16 recklessness,, no one can be set forth on what is in this
17 indictment unless he did it knowingly and wilfully.

18 MR. WOHL: I think your Honor will probably
19 include in that --

20 THE COURT: I think the less we say further the
21 better, frankly.

22 MR. WOHL: I would appreciate it if the
23 charge, your Honor, is now talking about could be balanced
24 with not only what the innocent states of mind are, but
25 the guilty states of mind.

1 gwb-5

2 THE COURT: You mean on the other hand, if
3 you find that the action was --

4 MR. WOHL: That all the elements were proven.

5 THE COURT: How many times do I have to rub
6 people's noses in these things? I think the charge to
7 some degree is over-estimated by some of us.

8 I will state this in a neutral tone.

9 MR. WOHL: Your Honor is going to give
10 Request Number 11, then?

11 THE COURT: The first two paragraphs.

12 MR. NEWMAN: One observation. We never formally
13 put on the record what, if any, objections we had to each
14 other's summations. It never came to pass. You had
15 to leave. You told us to reserve. I didn't object
16 during the summation nor did he during mine.

17 There were two objections that I had to Mr.
18 Wohl's summation where he said to the jury that if you
19 try to get this material, would you get it for nothing,
20 and another situation where in my judgment he made the
21 jury participants in this particular case.

22 I respectfully object to that.

23 THE COURT: Let's go.

24 (continued on next page.)
25

End 6B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

NOTICE OF APPEAL
76 CR 708

THEODORE G. DALEY,

Defendant.

-----x

S I R S :

PLEASE TAKE NOTICE that the defendant THEODORE G. DALEY hereby appeals from a judgment of conviction of a conspiracy to violate Title 18, Section 1951 of the United States Code and violation thereof and five counts of a violation of 29 U.S.C. 186 after a trial to a jury before the Honorable Morris E. Lasker, a Judge of this Court, which judgment was entered on the 6th day of May, 1977 and which sentenced the defendant DALEY to a suspended sentence of three years' probation and a \$25,000 fine.

DATED: NEW YORK, NEW YORK
May 11, 1977

Yours, etc.,

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